

Town of Esperance Zoning Law

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**TOWN OF ESPERANCE
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ESPERANCE, NY 12066**

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TOWN OF ESPERANCE, NEW YORK ZONING LAW

This Local Law is enacted in order to promote the health, safety, and general welfare of the Town of Esperance by dividing the Town of Esperance into Districts and by regulating the location, construction and use of buildings and structures, and the use of land in these Districts. This Law is enacted pursuant to the authority and power granted by Municipal Home Rule Law of the State of New York, Article 2, §10 et seq., and the Consolidated Laws of the State of New York, Chapter 62, Article 16. This Local Law is enacted for the purpose of promoting the health, safety, and general welfare of the people of the Town of Esperance, to lessen congestion in the streets, to secure safety from fire, panic and other dangers, to provide adequate light and air, to avoid undue concentration of population, to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public conveniences and necessities, and for such purposes to regulate the height, number of stories and size of buildings and other structures, percentage of lot occupancy, the size of yards and other open spaces, the density of population and use of buildings, structures and land for trade, industry, residence or other purposes. It is hereby declared to be a specific intent and purpose of this Local Law to preserve wherever possible the natural beauty and ecology of streams, water courses and bodies of water. This Local Law shall be construed, interpreted and applied in accordance with the fulfillment of these purposes. This Law is enacted in accordance with the Town's Comprehensive Plan.

The Town Board of the Town of Esperance, County of Schoharie, under authority of Town Law of the State of New York hereby ordains, enacts and publishes as follows:

SECTION 1 TITLE OF LOCAL LAW

This Local Law shall be known as “The Town of Esperance, New York, Zoning Law”.

SECTION 2 ESTABLISHMENT OF DISTRICTS

2.1 Designation and Type:

The Town is divided into the following districts:

- Agriculture and Rural Residential District (R-1) & (R-2)
- Hamlet Residential District (R-3)
- Commercial District (C)
- Mobile Home Park District (MP)
- Industrial District (I)
- Planned Development District (PDD)
- Flood Protection District (Refer to Flood Insurance Rate Maps (FIRMs) for Town of Esperance HUD flood hazard Maps)

2.2 Location:

The Districts are bounded and defined as shown on a map entitled “Town of Esperance, Schoharie County **New York Zoning Map Districts**”, adopted with this Local Law which accompanies as Appendix A and which, with all explanatory matter, is made a part of this Local Law and shall be kept on file in the office of the Town Clerk and available for public inspection.

SECTION 3

APPLICATION OF LOCAL LAW AND DEFINITIONS

3.1 Use: Except as hereinafter provided, no building or land shall be used or occupied unless in conformity with the regulations herein specified and any supplementary regulations for the district in which it is located.

3.2 Space and Construction: Except as hereinafter provided, no building or part thereof shall be erected, moved or altered unless in conformity with the regulations on space and constructions herein specified for the district in which it is located and with the supplementary regulations.

3.2.1 Fixation of yard space application: No part of a yard or other open space required about any building for the purpose of complying with the provisions of this Local Law shall be included as a part of a yard toward open space similarly required for another building.

3.3 Building Permit/Zoning Permit**:** No building or structure shall be erected, added to, or structurally altered until a building permit has been issued, as specified in Section 14, signifying that the building or structure and proposed use thereof complied with the provisions of this Local law **and until a zoning permit has been issued signifying that the building or structure and proposed use thereof complied with the provisions of this Local law.**

3.4 Certificate of Occupancy: No land shall be changed in use and no building or structure hereafter erected, altered or extended shall be used or changed in use until a Certificate of Occupancy has been issued, as specified in Section 14, signifying that such use or change in use complies with the provisions of the Local Law.

SECTION 4

NONCONFORMING USES

4.1 Existing Uses:

Except as hereinafter provided, the lawful use of any land existing at the time of the enactment of this Local Law may be continued although such use does not conform **to** ~~with~~ the provisions of the local law.

4.1.1 Exceptions: Any automobile wrecking yard, junk yard, or rubbish or garbage dump in existence at the date of enactment of this Local Law shall, at the expiration of one year from such date, conform to the regulations of Section 136 of the General Municipal Law. Any natural production use, such as the excavation and sale of sand, gravel, clay, shale or other natural mineral deposit or the quarrying of any kind of rock formation, in existence in any district at the date of enactment of this Local Law, must be conducted in accordance with such safeguards as the Board may deem necessary; the Board will specify the date or dates on or before which the safeguard or safeguards must be adopted.

4.2 Changes in Building or Use:

4.2.1 Unsafe Building: Any buildings or portion thereof containing a nonconforming use, which has been declared unsafe by any authority having jurisdiction over that structure, may be restored to a safe condition.

4.2.2 Restoration: Any building damaged by fire or other causes may be restored or rebuilt for the same nonconforming use, provided that area and cubic content of the building is not increased and provided that the building is rebuilt or restored within one year from the date of damage.

4.2.3 Alterations: A nonconforming building shall not be reconstructed or structurally altered during its life to an extent exceeding in aggregate cost one-half the replacement value of the building unless said building is changed to a conforming use. In no event shall more than one (1) alteration be permitted unless said use is changed to a conforming use.

4.2.4 Extension: A nonconforming use **or building** shall not be extended but the extension of a lawful use to any portion of a nonconforming building that existed prior to the enactment of this Local Law shall not be deemed the extension of such nonconforming use.

4.2.5 Displacement: No nonconforming use shall be extended to displace a conforming use.

4.2.6 Abandonment: No nonconforming use which shall have ceased for a period exceeding one year shall be resumed.

4.2.7 Changes: A nonconforming use shall not be changed unless changed to a conforming use. A nonconforming use, if changed to a conforming use, may not thereafter be changed back to a nonconforming use.

4.2.8 Damaged Buildings: Any building which is **suspected to be unsafe can be reported to the Code Enforcement Officer and shall be dealt with in accordance with the Town of Esperance Unsafe Buildings and Structures Law.** ~~damaged by fire or other accidental cause, or by flood, wind, lightning or other natural cause,~~

~~to the extent that it is no longer used for its regular or former purpose, shall be repaired, rebuilt, or razed within one hundred twenty (120) days after the damage is sustained. A special permit may be granted for a period not to exceed one (1) year after the expiration of the one hundred twenty (120) day period, to permit repair or rebuilding, but additional time after one hundred twenty (120) days may not be allowed for the purpose of razing a damaged building. If the building is razed the lot shall be deemed a junkyard until such time as all material formerly a part of or attached to the building has been removed from the premises, except that foundations and water supply and sewage equipment need not be removed.~~

4.3 Construction Approved Prior to Local Law:

Nothing herein contained shall require any change in plans, construction or designated use of a building for which a building permit has been previously issued and the construction which shall have been diligently prosecuted prior to the effective date of this Local Law or any amendment effecting such Permit and which entire building shall be completed within one (1) year from the effective date of this Local Law or any such amendment and in accordance with such plans as originally filed.

4.4 District Changes:

Whenever the boundaries of a district shall be changed so as to transfer an area from one district to another district of a different classification, the foregoing provisions shall also apply to any nonconforming uses existing after such change.

SECTION 5 DISTRICT REGULATIONS IN GENERAL

5.1 Use Regulations:

5.1.1 Permitted uses: Permitted uses of land and buildings in this chapter shall be permitted in the districts indicated under the conditions specified. No building or tract of land shall be devoted to any use other than any uses permitted within the zoning district in which such building or tract of land is located, with the exception of the following:

- 1) Except as herein provided, uses lawfully established prior to the effective date of this Local Law.
- 2) Special uses permitted in accordance with the provisions of this Local Law.

5.1.2 Special Uses: Special uses, as herein listed, may be permitted in the zoning district indicated, subject to the issuance of special use permits. Procedure is established in Section 13.

5.1.3 Non-Conforming Uses: See Section 4

5.1.4 Temporary Uses: Temporary uses are permitted if such use is a permitted use in the district in which the use is to take place. Temporary uses are permitted by Special Use Permit if such use requires a permit in the district in which the use is to take place. No use expressly permitted or permissible upon the granting of a Special Use Permit as a permanent or temporary use in any district pursuant to the provisions of this Local Law shall be allowed as a temporary use in any other district. A temporary use is one which is established for a fixed period of time less than one (1) year with intent to discontinue such use upon the expiration of such time and which does not involve the construction or alteration of any permanent structure.

5.1.5 Interim Dwelling: In any district, the **Code Enforcement Officer** ~~Board of Appeals~~ may authorize a temporary permit for a mobile home not located in a mobile home park or R-2 district when such mobile home is to be used as an interim dwelling, **when in the event that** a permanent residence has been **substantially** damaged or destroyed, **for farm worker housing on an operating farm in a State certified Agricultural District**, or **for** other similar hardship conditions. Said mobile home shall be provided with approved water and sewage disposal systems and tie downs, and shall be subject to such additional conditions and requirements as may be imposed by the **Code Enforcement Officer** ~~Zoning Board of Appeals~~. In such cases, said mobile home shall be removed within twelve (12) months from the date of issuance of the temporary permit. An extension may be granted by the **Planning** ~~Zoning Board of Appeals~~. No public hearing shall be required ~~and no referral to Planning Board shall be required~~ for a temporary permit issued for an interim dwelling.

5.2 Accessory Buildings and Uses: The term “residential districts” include the R-1, R-2, R-3 and MP districts only.

5.2.1 Permitted Accessory Use in Residential Districts:

Accessory uses in residential districts shall be limited to the following:

- 1) Private garages, swimming pools, tennis courts and other recreation facilities for the use of residents, and not run for gain.
- 2) Accessory parking and loading.
- 3) Building or structures accessory to permitted agricultural uses.
- 4) Buildings for lawn care or maintenance of residential property.
- 5) Buildings or structures designed to shelter school children awaiting school bus pickup.
- 6) Home gardening and non-commercial agriculture.
- 7) Home occupations.
- 8) **Outdoor wood burning furnaces located in rear yards. (Special Use in R-3 if less than one acre parcel)**

5.2.2 Location in Residential Districts: All detached accessory buildings or structures shall conform to the front, side and rear yard requirements of the principal use except fences.

5.2.2.1 Accessory Special Uses in Residential Districts:

Buildings/structures/uses for existing or approved telecommunication facilities may be permitted in residential districts pursuant to Special Use Permit Authorization.

5.2.3 Business and Industrial Accessory Uses: Accessory parking and loading and accessory buildings or structures incidental to the principal use may be permitted in the business and industrial districts subject to Special Use Permit Authorization.

5.3 Lot Requirements:

5.3.1 Lot Size in General: Lot size requirements shall be as specified under each zoning district. No building or structure shall be constructed or converted so as to conflict with the lot size requirement or the district in which such building or structure is located.

5.3.2 Lot Width: Lot width of any lot shall be measured along the minimum building setback line as required for the district in which it is located.

5.3.3 Lot Coverage: Lot coverage shall not exceed the maximum specified in this Article.

5.4 Yard Requirements:

5.4.1 Yard Requirements In General: Yard requirements shall be as set forth under each zoning district and use. Front, rear and side yards shall be provided in accordance with the requirements of this Article.

5.4.2 Yard Requirements for Accessory Buildings: All accessory buildings which are attached to principal buildings (e.g. attached garages) shall comply with the yard requirements of the principal building.

**SECTION 6
AGRICULTURAL & RURAL RESIDENTIAL DISTRICTS
(R-1) + (R-2)**

~~6.1 Permitted Uses: R-1 & R-2~~

- ~~1) Customary agricultural use, including the keeping of domestic farm animals in buildings and structures not less than 200 feet from any existing neighboring residential dwelling.~~
- ~~2) Single family dwellings.~~
- ~~3) Municipal parks and playgrounds, fire houses, churches, parish houses, rectories and convents.~~
- ~~4) Non boarding public educational institutions.~~
- ~~5) Roadside stands for the sale of products grown on premises.~~
- ~~6) Two family dwellings.~~

~~6.2 Uses Permitted by Special Use Permit – R-1 & R-2:~~

- ~~1) Multi family dwellings.~~
- ~~2) Campgrounds and camps operated as such on an annual or seasonal basis, but not on a temporary or occasional basis.*~~
- ~~3) Commercial summer camps and retreats operated as such on an annual or seasonal basis, but not on a temporary or occasional basis.*~~
- ~~4) Public swimming, tennis and similar clubs operated as such on an annual or seasonal basis, but not on a temporary basis.*~~
- ~~5) Transmission stations and towers, public utility installations.*~~
- ~~5a) Telecommunications Facilities.*~~
- ~~6) Veterinary clinics, commercial hobby and private kennels.*~~
- ~~7) Airports and landing fields.*~~
- ~~8) Commercial stables and riding academies operated as such on an annual or seasonal basis, but not on a temporary or occasional basis.*~~
- ~~9) Commercial cemeteries.~~
- ~~10) Golf courses.~~
- ~~11) Commercial extraction of soil, sand, gravel, peat or stone.*~~
- ~~12) Saw mills.*~~
- ~~13) All principal uses permitted in the R-3 District subject to Special Use Permit.~~

~~*There uses are additionally subject to regulations provided for in Paragraph 14.5 of this Local Law.~~

~~**These uses are subject to paragraphs 14.4 *Special Use Permits for Telecommunications Facilities* and paragraph 14.5 *Planning Board Review of Special Permits*.~~

~~6.3 Minimum Lot Size – R-1 & R-2:~~

~~The following minimum lot sizes and coverage shall be complied with by all uses in R-1 and R-2 Districts except where the Board of Zoning Appeals requires a higher standard as a condition for special permit approval:~~

- ~~1) Minimum lot area shall be 66,000 sq. ft.~~
- ~~2) Minimum lot width shall be 200 ft.~~
- ~~3) Minimum lot depth shall be 200 ft.~~
- ~~4) Maximum lot coverage shall be 25%.~~

~~6.4 Minimum Yard Dimensions:~~

- ~~1) Minimum front yard shall be 50 ft.~~
- ~~2) Minimum side yard shall be 30 ft.~~
- ~~3) Minimum side yard on corner lot shall be 50 ft.~~
- ~~4) Minimum rear yard shall be 50 ft.~~

~~6.5 Maximum Building Heights – R-1 & R-2:~~

- ~~1) Maximum building height shall be 2.5 stories or 35 ft.~~
- ~~2) There shall be no height restriction for churches, or buildings or structures used for agricultural purposes.~~

6.1 Applies to R-1 District:

Minimum dimension of any dwelling unit shall be no less than 23 ft.

Minimum gross ground floor area shall be no less than 800 square feet as described in the Gross Floor Area definition Section 3.5.41.1 of this law.

6.2 Applies to R-2 District:

Minimum dimension of any dwelling unit shall be no less than 12 ft. Minimum gross ground floor area shall be no less than 720 square feet.

The following regulations apply specifically to Mobile home installations in the R-2 District shall conform to requirements as outlined in the NYS building code and applicable Federal regulations.

- (A) Each Mobile Home will have the space underneath the Mobile Home enclosed by skirting constructed of fire resistant material.
- (B) A Mobile Home shall be supported and anchored down in one of the following ways:

- ~~1. Adequately supported on a concrete slab six (6) inches or more thick and anchored with steel cables 1/4" 0.25 inches or larger, attached from the mobile home to anchor bolts spaced a maximum of every ten (10) feet in the concrete slab at the general outer edge of the mobile home. The concrete slab must have a minimum width and length no less than the mobile home it supports.~~
- ~~2. Supported on masonry piers, sixteen (16) inches square or larger, extending a minimum of forty (40) inches below the ground level and spaced a maximum of every ten (10) feet at the general outer edge of the mobile home. An eye bolt made of 0.5 inch diameter or larger steel rod shall extend above the top of the pier and be imbedded in the pier at least twelve (12) inches. The mobile home shall be firmly attached~~

at masonry piers to these eye bolts. If chimney blocks are use as masonry piers, then they must be filled with concrete and each chimney block pier must contain three pieces of 0.5 inch diameter or larger steel reinforcing rod, forty (40) inches long. The top of one or more of the reinforcing rods in each pier will have the shape of an anchor eye bolt and extend above the top of the pier. The mobile home shall be firmly attached at each pier to at least one of these reinforcing rods.

3. A masonry wall constructed on a footer placed a minimum of 40 inches below ground level.
4. No gas cylinders shall be located beneath any mobile home. All piping from fuel, storage tanks or cylinders shall be permanently installed and securely fastened in place.

SECTION 7 HAMLET RESIDENTIAL DISTRICT (R-3)

~~7.1 Permitted Uses:~~

- ~~1) Single family dwellings.~~
- ~~2) Two family dwellings.~~
- ~~3) Churches, fire houses, parish houses, rectories and convents.~~
- ~~4) Municipal parks and playgrounds.~~
- ~~5) Non boarding public educational institutions.~~
- ~~6) Customary agricultural uses including the keeping of domestic farm animals in buildings and structures no less then 200 feet from any existing neighboring residential dwelling.~~

~~7.2 Uses Permitted by Special Use Permit:~~

- ~~1) Private non boarding educational institutions.~~
- ~~2) Day care or nursery schools.~~
- ~~3) Hospitals~~
- ~~4) Nursing, rest and convalescent homes.~~
- ~~5) Libraries and museums.~~
- ~~6) Clubs and organizations~~
- ~~7) Public utility installations~~
- ~~8) Multi family dwellings.~~

~~7.3 Minimum Lot Sizes:~~

- ~~1) Minimum lot area shall be 40,000 sq. ft.~~
- ~~2) Minimum lot width shall be 150 ft.~~
- ~~3) Minimum lot depth shall be 150 ft.~~
- ~~4) Maximum lot coverage shall be 30%.~~

~~7.4 Minimum Yard Dimensions:~~

- ~~1) Minimum front yard shall be 40 ft.~~
- ~~2) Minimum side yard shall be 30 ft.~~
- ~~3) Minimum side yard on corner lot shall be 40 ft.~~
- ~~4) Minimum back yard shall be 40 ft.~~

~~7.5 Maximum Building Heights:~~

- ~~1) Maximum building height shall be 2.5 stories or 35 ft.~~
- ~~2) There shall be no height restriction for buildings or structures used for agricultural purposes.~~

7.1 Reduced Lot Size Provision:

Where public water and common waste water collection and treatment facilities are available and proposed to be used, minimum lot sizes for single family residential dwellings may be reduced to 30,000 sq. ft. per dwelling unit. Minimum lot width may be reduced to 100 feet.

7.2 Minimum Dimension:

Minimum dimension of any dwelling unit shall be no less than twenty-three (23) feet. Minimum gross ground floor area shall be not less than eight hundred (800) square feet as defined in Section 3.5.41.1 of this law.

SECTION 8 MOBILE HOME PARK DISTRICT (MP)

~~8.1 Permitted Uses:~~

- ~~1) Mobile home in parks subject to Section 8.6~~
- ~~2) Recreational facilities intended primarily for the use of mobile home park residents.~~

~~8.2 Uses Permitted by Special Use Permit:~~

- ~~1) Single family dwellings accessory to a mobile home park~~
- ~~2) Accessory public utility installations.~~

~~8.3 Minimum Lot Size:~~

- ~~1) Minimum lot area shall be ten (10) acres.~~
- ~~2) Minimum lot width shall be 400 ft.~~
- ~~3) Minimum lot depth shall be 400 ft.~~

~~8.4 Minimum Yard Dimensions:~~

- ~~1) See Section 8.6.4(3).~~
- ~~2) Other uses shall conform to R-2 District yard dimensions.~~

~~8.5 Maximum Building Heights:~~

~~Maximum Building heights shall be 2.5 stories or 35 ft.~~

8.1 Mobile Homes and Mobile Home Parks:

8.1.1 Location: Mobile homes or house trailers are specifically prohibited in all zoning districts except the MP, Mobile Home Park District and the R-2 District.

8.1.2 Temporary Storage of Trailers: Nothing in this Local Law shall prohibit the storing or parking of an unoccupied camping or travel trailer. The temporary parking of an occupied travel trailer on any residential lot is permitted for a period not longer than thirty (30) days in any twelve (12) consecutive months. The above mentioned trailers must not violate the required minimum yard dimensions for the district in which located.

8.1.3 Pre-Existing Mobile Homes: Notwithstanding any provision of this Local Law, owners and/or lessees of property with the Town of Esperance upon which a mobile home has been situated and established prior to the enactment of said Zoning Law shall retain such previous right and prerequisites pertaining thereto, in the same manner as any other dwelling, and including the right to substitute another mobile home presently situated and established on said property.

8.1.4 Mobile Home Park Design Regulations: The Town Board may, after Planning Board review, public notice and hearing, establish an MP, Mobile Home Park District provided the applicant meets the following standards for development:

- 1) Minimum Park Size:** Each mobile home park shall be not less than 435,000 square feet in site area.
- 2) Maximum Gross Density:** The overall gross density (total acres of the site divided by the number of mobile home lots) shall not exceed one per 20,000 square feet.
- 3) Setbacks and Distances between Mobiles Homes:** There shall be a minimum of fifty (50) feet distance between mobile homes, and property lines. Minimum set back shall be fifty (50) feet from a public street and twenty-five (25) feet from the edge of an interior street. In computing these clearances, lean-to's, auxiliary rooms, and similar accessories connected to the mobile home, but not including temporary porches and canopies which are open on two or more sides, shall be considered as part of the mobile home.
- 4) Required Off-Street Parking:** There shall be at least two off-street parking spaces for each mobile home site. Such spaces shall be located on the individual lot or grouped to serve two or more sites. In addition, there shall be 1.5 off-street parking spaces for each three mobile homes within the park located throughout

the park at places of public congregation. Size and design of parking spaces shall conform to the requirements of this Local Law.

5) Access: Mobile home parks shall have at least two (2) connections with a major street or highway, adequate to handle traffic from the park without creating nuisance or endangering public safety in adjacent properties or neighborhoods.

6) Recreation Areas and Exterior Yards: An area of not less than five hundred (500) square feet per trailer lot shall be provided for the recreational use of all residents of the trailer park. In addition, such park shall have a landscaped area at least fifty (50) feet wide along all exterior lot lines and street frontages. Such yard shall be suitably planted, landscaped and maintained so as to screen and obscure adjacent properties.

7) Waste Disposal: Any mobile home park shall have a sewage disposal system approved by the New York State Health Department.

8) Utility Shed: On each mobile home lot, there shall be located an enclosed utility shed. Such shed shall not be located between the mobile home and the street.

9) Interior Roads: All areas in the mobile home park shall have no less than a fifty (50) foot right-of-way, and at least twenty (20) feet hard aggregate surface. All such roadways and streets shall be properly drained and shall be maintained in good condition by the operator of the mobile home park.

10) Baseboards: All outside area below the mobile home floor line shall be enclosed with suitable material.

11) Inspection: A semi-annual inspection of each home park shall be made by the Town Code Enforcement Officer with the Fire Chief of the appropriate Fire District.

12) The mobile home is provided with a stand and support capable of maintaining the mobile home in a stable position, and with anchors or tie-downs capable of securing the mobile home. The base shall be a concrete slab six (6") inches thick of the same dimensions of the mobile home.

SECTION 9 COMMERCIAL (C)

9.1 Permitted Uses:

- ~~1) Municipal parks and playgrounds~~
- ~~2) Roadside produce stands for the sale of products grown on premises~~
- ~~3) Antique shop~~
- ~~4) Art store~~
- ~~5) Bake shop~~
- ~~6) Barber shop~~
- ~~7) Beauty parlor~~
- ~~8) Church or other place of worship~~
- ~~9) Drug store~~
- ~~10) Federal, state, county or town municipal buildings~~

- ~~11) Flower shop/Garden supplies~~
- ~~12) Fruit market~~
- ~~13) Funeral home~~
- ~~14) Meat market~~
- ~~15) Professional office~~
- ~~16) Photograph shop~~
- ~~17) Post office~~
- ~~18) Book store~~
- ~~19) Equipment sales/rentals~~
- ~~20) Gift shop~~

The ~~above~~ permitted uses **are** for retail establishments only. Wholesale businesses **es** dealing in similar goods require a Special Use Permit.

~~9.2 Permitted by Special Use Permit:~~

- ~~1) Airport*~~
- ~~2) Air freight pickup station~~
- ~~3) Auctions~~
- ~~4) Automobile sales and service~~
- ~~5) Bar or nightclub*~~
- ~~6) Bowling Alley~~
- ~~7) An electrical substation, gas district, telephone exchange, or other public utility building, structure of use, except facilities for the manufacture or storage of illuminating gas.~~
- ~~8) Drive In Establishment~~
- ~~9) Recreation Center wherein may be carried on the business of operating a roller skating rink, snack bar, skate shop, pro shop, amusement devices and games.~~
- ~~10) Boarding and/or rooming house~~
- ~~11) Car washing station~~
- ~~12) Commercial parking lot~~
- ~~13) Dance hall, skating rink, billiard hall~~
- ~~14) Shopping center*~~
- ~~15) Drive in movie theater~~
- ~~16) Funeral home, undertaking establishment~~
- ~~17) Gasoline station~~
- ~~18) Hotel and conference center*~~
- ~~19) Motel~~
- ~~20) Newspaper office, printing shop~~
- ~~21) Personal service~~
- ~~22) Public garage~~
- ~~23) Radio, television and other electrical transmission stations and towers.*~~
- ~~23a) Telecommunications Facilities.*~~
- ~~25) Restaurant, café~~
- ~~26) Retail business or service, not specifically mentioned herein*~~
- ~~27) Riding academy, stables*~~

- ~~28) School conducted for profit~~
- ~~29) Self-service laundry~~
- ~~30) Theater concert hall*~~
- ~~31) Veterinarian office, animal hospital*~~
- ~~32) Commercial, hobby and private kennels*~~
- ~~33) Wholesale business or service not specifically mentioned herein*~~
- ~~34) Shop for making of articles to be sold at retail on the premises*~~
- ~~35) Theater, poolroom or bowling alley~~
- ~~36) Wholesale business, including storage in bulk of such material offered for sale by owner, lessee or occupant of premises as building material, contractor's equipment, dry goods, feed, food, furniture, hardware, ice, machinery, paint materials or shop supplies.*~~
- ~~37) Commercial activities or gathering of more than 5000 people operated on a temporary or occasional basis, provided that each commercial activity or gathering shall be deemed a different public assemblage requiring a separate Special Use Permit.~~
- ~~38) Public assemblage gatherings of more than 5000 people provided that each public assemblage shall be deemed a different public assemblage requiring a separate Special Use Permit.~~
- ~~39) Junkyard*~~
- ~~40) Churches, fire houses, parish houses, rectories and convents~~
- ~~41) Non boarding public educational institutions~~
- ~~42) Single family dwellings (lot restriction to comply with R-2)~~
- ~~43) Two family dwellings (lot restriction to comply with R-2)~~
- ~~44) Job printing plant*~~
- ~~45) Campgrounds*~~
- ~~46) Grocery store~~
- ~~47) Hardware store~~
- ~~48) Public library~~
- ~~49) Sporting goods store~~
- ~~50) Multi-family dwelling~~

~~*Subject to the provisions of paragraph 14.5 of this Local Law.~~

~~**These uses are subject to paragraphs 14.4 *Special Use Permits for Telecommunications Facilities* and paragraph 14.5 *Planning Board Review of Special Permits*.~~

~~9.3 Minimum Lot Sizes:~~

- ~~1) Minimum lot area shall be 40,000 sq. ft.~~
- ~~2) Minimum lot width shall be 150 ft.~~
- ~~3) Minimum lot depth shall be 200 ft.~~
- ~~4) Maximum lot coverage shall be 35%~~

~~9.4 Minimum Yard Dimensions:~~

- ~~1) Minimum front yard shall be 70 ft.~~

- ~~2) Minimum side yard shall be 30 ft.~~
- ~~3) Minimum side yard on corner lot shall be 70 ft.~~
- ~~4) Minimum back yard shall be 50 ft.~~
- ~~5) Maximum Building Heights: three stories or 42 feet.~~

~~SECTION 10~~ ~~INDUSTRIAL DISTRICT (I)~~

~~10.1 Uses Permitted by Special Use Permit:~~

- ~~1) Animal hospital, commercial, hobby and private kennels*~~
- ~~2) Bakery~~
- ~~3) Bottling works*~~
- ~~4) Building material yard*~~
- ~~5) Cabinet making~~
- ~~6) Carpenter's shop~~
- ~~7) Clothing manufacture~~
- ~~8) Dyeing and dry cleaning works*~~
- ~~9) Electrical welding when entirely closed within a building~~
- ~~10) Fruit canning or packing*~~
- ~~11) Ice plant*~~
- ~~12) Laundry~~
- ~~13) Milk distribution plants*~~
- ~~14) Optical goods manufacture~~
- ~~15) Paper box manufacture*~~
- ~~16) Pencil manufacture~~
- ~~17) Printing, publication or engraving~~
- ~~18) Public garage~~
- ~~19) Railroad spurs and sidings~~
- ~~20) Research and development facilities*~~
- ~~21) Wholesale trade~~
- ~~22) Freight or trucking terminal*~~
- ~~23) Public commercial warehouse~~
- ~~24) Public storage warehouse~~
- ~~25) Sawmill and woodworking facilities*~~
- ~~26) Commercial activities or gatherings of more than 5000 people operated on a temporary or occasional basis provided that each commercial activity or gathering shall be deemed a different use requiring a separate Special Use Permit*~~
- ~~27) Public Assemblage or gatherings provided that each public assemblage shall be deemed different public assemblages requiring a separate Special Use Permit.*~~
- ~~28) Retail or wholesale business or service not specifically mentioned herein*~~
- ~~29) Telecommunications Facilities.**~~

~~* Subject to the provisions of paragraph 14.5 of this Local Law.~~

~~** These uses are subject to paragraphs 14.4 *Special Use Permits* for~~

~~Telecommunications Facilities and paragraph 14.5 Planning Board Review of Special Permits.~~

~~10.2 Minimum Lot Sizes:~~

- ~~1) Minimum lot area shall be 100,000 sq. ft.~~
- ~~2) Minimum lot width shall be 200 ft.~~
- ~~3) Minimum lot depth shall be 200 ft.~~
- ~~4) Maximum lot coverage shall be 30%.~~

~~10.3 Minimum Yard Dimensions:~~

- ~~1) Minimum front yard shall be 80 ft.~~
- ~~2) Minimum side yard shall be 40 ft.~~
- ~~3) Minimum side yard on corner lot shall be 80 ft.~~
- ~~4) Minimum back yard shall be 80 ft.~~

~~10.4 Maximum Building Heights:~~

- ~~1) Maximum building height shall be three stories or 42 feet.~~

SECTION 10 PLANNED DEVELOPMENT DISTRICT

A Planned Development District (PDD) shall be created as an amendment to this Zoning Law. The PDD is designed to accommodate such large-scale, **mixed** uses as will be of benefit to the community but which could not have been anticipated at the time of adoption of this Local Law.

10.1 Procedure:

10.1.1 Preliminary Proposal: Any applicant wishing approval for a **Planned** Development District shall submit his/**her/their** request to the Town Board in the form of a Preliminary Proposal which shall include:

- a. A sketch plan showing existing and proposed land use and the approximate location of proposed buildings, existing topographic characteristics, approximate location of existing and proposed streets and easements, and existing land uses immediately adjacent to the proposed PDD.
- b. A written explanation of the character and purpose of the Planning Development including the type of density of any housing proposed, open space to be provided, the water and sewage disposal system proposed, a general statement of proposed financing, and an indication of the expected timetable for development.

10.1.2 Developer's Conference: Upon receipt of the preliminary Proposal the Town Board shall forward it to the Planning Board for approval or disapproval. Within forty-five (45) days after receipt of the Preliminary Proposal from the Town Board, the Planning Board shall schedule a conference with the applicant to review the proposed

Planned Development. If said proposal seems to be in accordance with overall planning objectives for the area, the Planning Board and applicant shall jointly consider the conditions and specifications under which the proposal will be approved. After such conference, if the applicant wishes to proceed with the Planned Development, he shall submit to the Planning Board, a written Statement of Intent to comply with the conditions and specifications as established. If agreement on conditions cannot be reached, the Planning Board may, at that time, recommend to the Town Board that, the proposal not be approved. Such recommendations shall include a detailed explanation of the basis for the Planning Board's decisions.

10.1.3 Planning Board Recommendation: Upon receipt of the applicant's statement of his intention to comply with the established conditions, the Planning Board shall, within thirty (30) days, forward to the Town Board, its recommendation to modify the zoning law and establish the PDD. Such Planning Board report shall include the recommended conditions and covenants which the applicant shall observe in the Planned Development, the applicant's "Statement of the Intent to Comply" with said conditions and covenants, and a recommendation on the type and amount of performance guarantee which the developer should provide.

10.1.4 Conditional Approval: Within forty-five (45) days after receipt of the Planning Board's recommendation to approve or disapprove the proposed PDD, the Town Board shall hold a public hearing on the proposal. Within ten (10) days after such public hearing, the Town Board shall approve conditionally or disapprove the proposed PDD. When conditional approval is granted, the location of the PDD shall be noted on the Zoning Map. Conditional approval shall automatically become final upon acceptance of the Site Development Plan by the Planning Board. In the event the Town Board wishes to act contrary to the recommendation of the Planning Board, such action shall be made by a majority vote.

10.1.5 Site Development Plan: Upon receiving conditional approval by the Town Board, the applicant shall prepare a Site Development Plan for submission to the Planning Board. Such submission shall satisfy all the conditions imposed by the Town Board. Written approval of a Site Development Plan by the Planning Board shall be filed with the Town Board and the Enforcement Officer. This shall constitute authorization for the application to proceed with the Planned Development.

10.1.6 Changes: Minor changes may be made in an approved Site Development Plan only upon approval of the Planning Board. Major changes such as increased density or reduction of open space are subject to Town Board review and approval.

10.2 Development Guidelines: In reviewing proposals for Planned Development Districts, the Planning Board will be guided generally by the following standards and may impose additional conditions as well:

10.2.1 The proposed district should be at least two (2) acres in area and the overall density of any residential areas should be no more than two (2) dwelling units per gross acre.

10.2.2 At least thirty (30%) percent of the gross area of the district should be devoted to open space and/or recreation areas.

10.2.3 Proposed non-residential uses shall be appropriate in size and suitably located and shall not create any detrimental influences inside or outside the boundaries thereof.

10.2.4 Approved utility support systems (water, sewers, electricity) shall be required. Electric distribution and telephone lines shall be put underground.

10.2.5 An approved storm drainage system shall be provided which will not be detrimental to the surrounding area.

10.2.6 All provisions of the Local Law affecting signs and off-street parking shall be complied with.

10.2.7 Development in such districts shall be protected by such reasonable and appropriate safety measures, devices, screening, or yards as may be required by the Planning Board, in order to avoid or minimize any adverse effects on the development itself or on the surrounding area.

All Planned Development District proposals shall be consistent with the need to minimize flood damage that all public utilities and facilities, such as sewer, gas, electrical, and water systems, are located, elevated, and constructed to eliminate or minimize flood damage, and that adequate drainage is provided so as to reduce exposure to flood hazards.

SECTION 11~~2~~

FLOOD PROTECTION DISTRICT & RIPARIAN PROTECTION AREA

(Also refer to HUD Flood Hazard Maps Flood Insurance Rate Maps)

11.1 The Town of Esperance Flood Damage Prevention Law shall be adhered to ~~following regulations shall apply in~~ **all instances** ~~FPD Districts in addition to the regulations of the underlying zoning districts.~~

~~**12.1.1** All Buildings and structures shall be designed and anchored to prevent floatation, collapse, or lateral movement; shall use construction materials and utility equipment that are resistant to flood damage; and shall use construction methods and practices that will minimize flood damage.~~

~~**12.1.2** All public utility systems and facilities serving any building or structure shall be located, elevated, or constructed to minimize or eliminate flood damage; and adequate on-site drainage shall be provided to reduce exposure to flood hazard.~~

~~12.1.3 No floor level, including a basement floor, in a residential structure shall be constructed below the water surface elevation level of a 100-year flood; except that floor area, together with utility and sanitary facilities, may be constructed below this level if flood-proofed as specified herein.~~

~~12.1.4 In a non-residential structure, no floor level, including a basement floor, shall be constructed below the water elevation level of a 100-year flood; except that floor area, together with attendant utility and sanitary facilities, may be constructed below this level if flood-proofed as specified herein.~~

~~12.1.5 Within a floodway designated by the Federal Insurance Administration, no use, including landfill, or structure shall be permitted within any flood plain having special flood hazard, unless or until the person owning or developing such use or structure shall demonstrate that the proposed use or structure, when combined with the other existing uses or proposed uses approved by the Town Planning Board under this section, will not increase the water surface elevation of a 100-year flood more than one (1) foot at any point.~~

~~12.1.6 Within a designated floodway, fill or encroachment that would impair its ability to carry and discharge the waters resulting from a 100-year flood is prohibited, except where the effect on flood heights is fully offset by stream improvements.~~

~~12.1.7 Flood-proofing measures as required in this section may include the following, where appropriate:~~

~~12.1.7.a Anchorage to resist floatation and lateral movement.~~

~~12.1.7.b Reinforcement of walls to resist water pressures.~~

~~12.1.7.c Installment of watertight doors, bulkheads, and shutters.~~

~~12.1.7.d Use of paints, membranes, or mortars to reduce seepage of water through walls.~~

~~12.1.7.e Addition of mass or weight to resist floatation.~~

~~12.1.7.f Installation of pumps to lower water levels in structures.~~

~~12.1.7.g Construction of water supply and waste treatment systems so as to prevent the entrance of flood waters.~~

~~12.1.7.h Pumping facilities to relieve hydrostatic water pressure on external walls and basement floors.~~

~~12.1.7.i Construction to resist rupture or collapse caused by water pressure or floating debris.~~

~~12.1.7.j Elevation of structures to or above the necessary flood protection elevation.~~

11.2 RIPARIAN PROTECTION AREA

A. The overall goal of this section is to protect and encourage the restoration of the existing riparian resources of the Town of Esperance in order to protect the public health, safety, and welfare. Burdens on existing structures in the riparian buffer are

meant to be limited. Helping slow down flood waters before reaching larger bodies of water, enhancing wildlife habitats, and improving water quality is the intent of this section.

B. Riparian Areas Regulated by this Law. Riparian areas subject to this Law include the identified buffer areas along streams identified on the Town of Esperance Zoning Map (approximately fifty (50) feet from the centerline of the regulated stream or creek. Fifty (50) feet from the stream edge of the Schoharie Creek) In no circumstances shall an area developed prior to January 1, 2014 be subject to this section.

C. Activities Allowed as of Right. The following uses are allowed in riparian areas without a permit providing they do not involve hydrologic modifications or fills:

1. Conservation of soil, vegetation, water, fish, and wildlife.
2. Private wildlife sanctuaries, woodland preserves.
3. Outdoor recreation including nature study, hiking, horseback riding, swimming, camping, trapping, hunting, fishing, shell fishing, snowmobiling, cross-country skiing where otherwise legally permitted.
4. The control of noxious weeds if the control does not involve drainage or fill.
5. Open space uses incidental to the enjoyment and maintenance of adjacent residential, commercial and industrial property such as open space for subdivisions and building setback areas, mowing for a trail.
6. Maintenance and repair of existing ditches, watercourses, farm ponds, utilities, roadways providing the activity does not involve the expansion of roadways or related improvements into previously unimpacted areas.
7. The enhancement or restoration of riparian areas less than one acre and not associated with any development proposal.
8. Agriculture using best management practices.
9. Temporary stream crossings for logging practices.

D. Activities Requiring a Permit. All activities in regulated riparian areas involving mowing for reasons other than a trail, filling, excavation, dredging, live large tree cutting/removal, grading or excavation, construction, removal of peat, sand or gravel, alteration of the water level or water table, disturbance of surface drainage characteristics, sediment patterns, or flood retention characteristics or any other alteration or use of a riparian areas not permitted by this Law shall require a riparian area permit from the Planning Board.

Any person proposing to carry out an activity which may disturb the natural and indigenous character of a regulated riparian area may, prior to the commencement of the operation, notify the Planning Board with sufficient information to enable it to determine whether the proposed activity is an activity permitted as of right or an activity requiring a permit. Such a ruling by the Planning Board shall be made in writing within thirty (30) days of submission and a determination by the Board that the application is complete.

E. Information to be Provided by Permit Applicants. The Planning Board shall develop and make available riparian area permit application forms. Individuals or public or private corporations seeking a permit for a regulated activity within a riparian area shall fill out and submit this form to the Planning Board. All applications shall include, at the minimum, the following information in writing or on maps or drawings in the form prescribed by the Planning Board:

1. Name, address, telephone number, and e-mail address of owner and permit applicant (if different);
2. A sketch map and description of the riparian area on the project site or which may be impacted by the proposed activity;
3. A description of the proposed activity including the type of proposed activity, its dimensions, and distance from any road or water body;
4. A description of all grading, filling, and vegetation removal proposed by the project applicant including an estimate of the dimensions of the area which will be affected;
5. An explanation why this activity cannot be located at an upland location;
6. A description of all measures proposed to reduce or compensate for project impacts;
7. Name and location of the nearest road intersection;
8. Photographs of the proposed project site showing the existing condition of the site;
9. The lot size and size of any adjacent parcels owned by the project applicant;
10. Any surface water bodies located on or within one hundred (100) feet of the project site;
11. The 100 year flood elevation and floodplain and floodway boundaries at the project site if FEMA or other flood maps are available;
12. A description of proposed restoration or riparian vegetation for all surfaces;
13. A map of any wetlands which may be impacted by the proposed activity; and
14. A description of the construction sequencing and timetable for any proposed activities including description of future phases of projects.

The Planning Board may also require a permit applicant to submit additional information if the Planning Board deems such information necessary to determine the compliance of a proposed activity with the standards and criteria set forth in the Law. Such information may include:

1. Description of ecological communities and functions;
2. Description of how the application will change, diminish, or enhance the ecological communities and functions;
3. Name, address, professional status, license number, and phone number of the person who is to prepare the riparian management or mitigation plan;
4. More detailed site plans;
5. Engineering reports and analyses where the proposed activity may be subject to flood or erosion hazards or increase such hazards of other types;

6. Mapping or description of soil types where onsite waste disposal is proposed; and
7. Analysis of chemical or physical characteristics of any fill material.

In addition, the Board may require the permit applicant to submit a riparian management and/or a compensatory mitigation plan.

F. Standards and Criteria for Issuance of Permits. The Planning Board shall consider all relevant facts in making its decision on any application for a riparian area permit including but not limited to the following:

1. The goals and purposes of this Law;
2. The functions and values of the riparian zone;
3. The environmental impact of the proposed action;
4. Alternatives to the proposed action;
5. The relationship between short-term uses and long-term productivity;
6. Threats to other properties from increases in flooding, erosion, or other hazards;
7. The suitability of the activity to the area for which it is proposed including threats from natural hazards; and
8. Measures which would mitigate the impact of any aspect of the proposed regulated activity.

The Planning Board shall not issue or conditionally issue a permit unless it finds that the proposed activity will not, taking into account individual and cumulative effects, threaten health or safety, result in fraud, cause nuisances, impair public rights in public waters, violate pollution control standards, or violate other regulations. In addition, the Planning Board shall not issue a permit unless it finds that:

1. The permit applicant has, to the extent practical, avoided riparian areas;
2. The permit applicant has, to the extent practical, reduced impacts to riparian areas;
3. The proposed activity will not increase flood, erosion, subsidence or other hazard on other lands and the proposed activity will not, in itself, be subject to flood and erosion hazards;
4. The proposed activity will not result in adverse modification of habitat for or jeopardize plant, animal, or other wildlife species listed as threatened or endangered by the U.S. Fish and Wildlife Service or the state of New York Department of Fish and Wildlife or the State of New York Heritage program; and
5. The proposed activity will not violate other applicable federal, state, and local water quality, flood loss reduction, fill and grading, stream protection, water supply protection, comprehensive zoning, sanitary code, and other statutes, regulations and ordinances.

The Planning Board shall make written findings on any permit applicant stating the reason why the proposed permit is approved, denied, or approved with modifications.

The Board may consider all relevant information including but not limited to the following in making its decision on the application:

1. The application and supporting documentation;
2. Public comments, evidence, and testimony;
3. Reports or comments from other local, state, or federal agencies and commissions; and
4. Comments on the application from planning agencies, emergency management agencies, soil and water conservation districts, or other regional organizations.

G. Conditions Which May Be Attached to Permits. The Planning Board may approve permits with modifications. The following conditions may be attached to permit approvals:

1. Design measures to further reduce project impacts;
2. Relocation of the proposed activity to reduce project impacts;
3. Flood and erosion loss reduction measures to prevent hazard losses to activities on other lands;
4. Even if not located in a Special Flood Hazard Area, a requirement that structures be elevated on piles, floodproofed or otherwise protected from hazards including flood heights, velocities, and erosion potential;
5. Modification of waste disposal and water supply facilities to reflect flooding, high ground water, and erosion hazards;
6. Set-backs from the river, stream, or other water body of a size appropriate for the proposed activity and the particular riparian area;
7. Erosion control and storm water management measures;
8. Erection of riparian area markers and signs including survey stakes delineating the boundary between riparian areas and adjacent lands;
9. Long-term monitoring and management requirements including control of exotic plant and animal species;
10. Other conditions necessary to protect riparian area functions, offset losses, and prevent increased natural hazard losses in the community.

H. Waivers. The Planning Board may issue waivers to the requirements of this Law where the regulations will otherwise deny landowners all economic use of entire properties taking into account existing uses, reasonably anticipated future uses, market values and sales for comparable properties, taxes, special assessments, and other factors. The Planning Board may issue a waiver only for the minimum deviations from permit standards, conditions, or mitigation measures, consistent with not denying landowners all economic use of their entire properties. The Board shall not authorize waivers for activities which will increase flood and erosion losses on other properties, pose threats to public health and welfare such as flash flooding, pollute potable water supplies, or otherwise cause nuisances. The Planning Board shall also not issue waiver for activities which will violate other Laws.

I. Prior Nonconforming Uses. Nonconforming uses including but not limited to buildings shall not be enlarged or expanded to further encroach onto the riparian area or watercourse. Existing structures are exempt from needing a riparian area permit as long as the use is continual. No nonconforming activity which has been discontinued for more than two (2) years shall be resumed without a riparian area permit. No nonconforming structure which has been destroyed or damaged for more than fifty (50) percent of its assessed value by flooding, wind, fire, or other natural or man-made force may be rebuilt unless placed in the original footprint or ~~only~~ with issuance of a permit in conformity with the provisions of this Law.

SECTION 12~~3~~

SUPPLEMENTARY REGULATIONS APPLYING TO ALL DISTRICTS

12.1 Uses Permitted:

12.1.1 Signs: Nothing in this Local Law shall prohibit the erection and maintenance of (a) necessary directional signs for guidance of the public, not more than five (5) square feet in area and containing the name of an establishment having good and services for sale, the name of such goods or services and directional guidance, and (b) official highway and other such signs.

12.1.2 Natural Production Uses: There may be allowed in any District, upon special permit from the Planning Board ~~of Appeals~~, and subject to such conditions and safeguards as deemed necessary by said Board ~~the and small scale~~ excavation and/or sale of sand, gravel, clay, shale or other natural mineral deposit, or the quarrying of any kind of rock formation.

12.1.3 Explicitly Prohibited Uses:

A. No manufacturing use nor any trade, industry, use or purpose that is noxious or offensive by reason of the emission of odor, dust, smoke, toxic or noisome fumes, radiation, gas, noise, potential groundwater contamination, vibration or excessive light, high volume truck traffic, or any combination of the above which is dangerous and prejudicial to the public health, safety and general welfare, shall be permitted in the Town of Esperance and no building or structure shall be created, altered or erected, and no body of water, land or building thereon shall be used, for any of such uses or activities. This includes more specifically but is not limited to the following such uses:

1. Junkyards

2. The storage of crude oil or any of its volatile or asphaltic oils or other highly inflammable liquids in aboveground tanks with unit capacity greater than ten thousand (10,000) gallons. All tanks having a unit capacity greater than five hundred fifty (550) gallons shall be properly diked with a dike or dikes having a

capacity of one and one-half (1 ½) times the capacity of the tanks or tank surrounded.

3. High volume hazardous material handling

4. Any process of assembly, extraction, manufacture or treatment normally constituting a nuisance by reason of odor, dust, smoke, toxic or noisome fumes, radiation, gas, noise, potential groundwater contamination, vibration or excessive light, high volume truck traffic including but not limited to such things as: chemical manufacturing, natural gas exploration/extraction, petroleum extraction, large scale mining, oil refineries, natural gas processing plants, petroleum and coal processing, coal mining, steel manufacturing, foundries, forge shops and boiler works; the manufacture or refining of asphaltic oils; the manufacture or processing of cork, fertilizer, linoleum, oilcloth and glue or gelatin; the tanning and storage of rawhides; the manufacture of paint, oil, turpentine, shellac, enamel or varnish; fat rendering; and fish smoking or curing; provided, however, the above shall not apply to exclude an industry, whether or not specifically mentioned, if such industry, after supplying satisfactory evidence to the Zoning Board of Appeals, is certified by that Board to be free of the nuisance characteristics typical of its kind, by reason of special design of structure or innovation in processes or other circumstances. Generic examples of uses not normally constituting a nuisance include: Agricultural activities (milk processing plants, dairy farms, crop farming, small meat processing facilities, wineries), woodworking and cabinet shops, service stations, wineries and breweries, warehouses, equipment repair and maintenance structures, office and communications buildings, parking lots, and water wells serving otherwise allowed uses of property.

~~5. Stockyards and/or slaughtering of animals, except for immediate consumption on premises or immediate retail sale~~

B. Billboards

~~The uses hereinafter enumerated are expressly prohibited for commercial purposes. This prohibition shall extend to any other use which in the opinion of the Zoning Board of Appeals or Planning Board, as the case may be, is or is likely to be noxious or offensive by reason of the emission of odor, smoke, toxic or noisome fumes, radiation, gas, noise, vibration or excessive light or any combination thereof or is likely to be harmful or injurious to public health, safety or the general welfare.~~

- ~~1) Acetylene gas manufacture for commercial purposes;~~
- ~~2) Ammonia, chlorine or bleaching powder manufacture;~~
- ~~3) Arsenal;~~
- ~~4) Asphalt manufacture or refining;~~
- ~~5) Blast furnace, not including cupola or converter furnaces used as fuel;~~

- ~~6) Boiler shops, structural steel fabricating shops, metal working shops, which operate reciprocating hammers or chisels or other noise producing electric or pneumatic tools within 100 feet of any boundary line of the premises and outside of any masonry buildings;~~
- ~~7) Brewing and aluminum powder manufacture;~~
- ~~8) Carbon, lampblack, shoe blacking, graphite, or stone polish manufacture;~~
- ~~9) Celluloid and other cellulose products manufacture;~~
- ~~10) Cement manufacture;~~
- ~~11) Coal tar products manufacture;~~
- ~~12) Disinfectant and insecticide manufacture;~~
- ~~13) Distillation of coal, wood or bones;~~
- ~~14) Dump or dumping of any garbage or refuse material, unless operated or controlled by the municipality;~~
- ~~15) Excelsior and fiber manufacture;~~
- ~~16) Explosives, fireworks, or match manufacture, assembling, or storage in bulk, except the manufacture, assembling, and storage in bulk of safety matches in book form;~~
- ~~17) Fat rendering;~~
- ~~18) Fertilizer manufacture or potash refining;~~
- ~~19) Fish smoking or curing;~~
- ~~20) Glue, size or gelatine manufacture or processing involving recovery from fish or animal offal;~~
- ~~21) Incinerator, unless operated by municipality;~~
- ~~22) Lime, gypsum, cement, plaster or Plaster of Paris manufacture, except the mixing of wet plaster;~~
- ~~23) Linoleum or oil cloth manufacture;~~
- ~~24) Ore reduction or the smelting of iron, copper, tin, zinc, or lead;~~
- ~~25) Paint, oil, varnish, turpentine, shellac, or enamel manufacture, except the mixing of wet paints;~~
- ~~26) Perfume and extract manufacture;~~
- ~~27) Petroleum refining;~~
- ~~28) Poisons manufacture; Fumigates, carbon disulphide, hydrocyanic acid, acid, ethyl, stomach poisons, arsenate of lead, arsenate of calcium, hellebore and paris green, contact insecticides, lime, sulfur, nicotine, kerosene emulsions;~~
- ~~29) Printing ink manufacture;~~
- ~~30) Radium extraction;~~
- ~~31) Coloring, curing, dressing or tanning of raw or green salted hides or skins;~~
- ~~32) Rubber caoutchouc or gutta-percha manufacture from crude or scrap material, except in connection with a rubber products manufacturing plant;~~
- ~~33) Salt works;~~
- ~~34) Sand paper and emery cloth manufacture;~~
- ~~35) Slaughtering of animals, except for immediate consumption on premises or immediate retail sale;~~
- ~~36) Soap, soda ash, or washing compound manufacture; except not containing caustic soda;~~
- ~~37) Starch, glucose, or dextrine manufacture;~~
- ~~38) Stockyards;~~

- ~~39) Sulphurous, sulphuric, nitric, pyric, or hydrochloric acid or other corrosive or offensive acid manufacture, or their use or storage, except on a limited scale as accessory to a permitted industry;~~
- ~~40) Tallow, grease, lard, or candle manufacture or refining;~~
- ~~41) Tar distillation or the manufacture of aniline dyes;~~
- ~~42) Tar roofing or waterproofing manufacture, except where the tar or asphalt is treated at a temperature under 100 degrees Fahrenheit;~~
- ~~43) Tobacco processing, exclusive of cigar or cigarette manufacture;~~
- ~~44) Vinegar, pickle or sauerkraut manufacture in bulk;~~
- ~~45) Wool pulling or scouring, except in connection with a woolen mill;~~
- ~~46) Yeast manufacture.~~

12.2 Space Regulations:

12.2.1 Existing Small Lots: Notwithstanding the limitations imposed by any other provisions of the Local Law, the **Planning Board of Appeals** may issue a special permit for the erection of a dwelling on any lot separately owned or under contract of sale and containing, at the time of the passage of this Local Law, an area or a width smaller than that required for a one-family dwelling. The minimum side yard requirements are reduced in proportion to the reduction of lot width over the specified minimum lot width for the District. This provision applies only where the applicant owns one lot, not two or more **adjacent lots**.

12.2.2 Reduced Lot Area: No lot shall be so reduced in area such that any required lot area will be smaller than prescribed in the regulations for the District in which said lot is located. Whenever such reduction in lot area occurs, any building located on said lot shall not thereafter be used until such building is altered, reconstructed, or relocated so as to comply with the area and yard requirements applicable thereto.

12.2.3 Front yard Depth: Notwithstanding the limitations imposed by any other provisions of this Local Law, each dwelling hereafter erected may have a front yard equal in depth to the average front yard depth of the dwellings within one hundred (100) feet adjacent thereto on each side, but no front yard shall be less than ten (10) feet, nor need any front yard have a greater depth than eighty (80) feet. If there exists no dwelling within one hundred (100) feet adjacent on one side, the minimum permissible depth shall be the average of the front yard depth of that district and the front yard depth of the dwelling on the other adjacent side.

12.2.4 Reduction in Rear Yards: When a lot is less than one hundred (100) feet deep at the time of the passage of this Local law, such rear yard may be decreased one-quarter (1/4) of the distance **of the existing** ~~that the lot depth is less than said one hundred (100) feet~~, provided, however, ~~that~~ no rear yard shall be less than fifteen (15) feet in depth except that any accessory building may be as close as six (6) feet from the rear property line.

12.2.5 Corner Lot Transition: On every corner lot there shall be provided on the side street a side yard equal in depth to the required front yard depth on said side street.

12.3 Off-Street Parking: The following motor vehicle parking spaces shall be provided and satisfactorily maintained, by the owner of the property, for each building which, after the date when this Local Law becomes effective, is erected, enlarged or altered for use for any of the following purposes. All parking spaces provided pursuant to this subsection shall be on the same lot with the building, except that the **Code Enforcement Officer** ~~Board of Appeals~~ may ~~issue special permits~~ **allow** for the parking spaces to be on any lot within five hundred (500) feet to the building, if it determines that it is impractical to provide parking on the same lot with the building.

12.3.1 Apartment House: At least two parking spaces for each dwelling unit in the building or buildings provided, however, that no front yard shall be used for the open-air parking or storage of any motor vehicle.

12.3.2 Auditorium, stadium, theater, or other places of Public Assemblage: At least one parking space for each four (4) new seats provided for its patrons (based on maximum seating capacity), or one parking space for each four persons contemplated (based on maximum attendance).

12.3.3 Hotel: At least one parking space for each room.

12.3.4 Restaurant or Other Eating Place: At least one parking space for each five (5) seats except when it is in a building which provides parking space, in which case the number of places already provided may be taken to be available for the restaurant or other eating place.

12.3.5 Hospital, Sanitarium or Nursing Home: At least one parking space for each three (3) patients and each three (3) employees.

12.3.6 Retail Establishments: At least one parking space for each one hundred (100) square feet of store floor area.

12.3.7 Office Buildings: At least one parking space for each three hundred (300) square feet of office floor area.

12.3.8 Industrial or Manufacturing Establishments: At least one parking space for each four hundred (400) square feet of gross floor area or for each three (3) workers, whichever is greater.

12.4 Traffic Hazards:

12.4.1 Visibility at Intersections: On a corner lot no fence, wall, hedge or other structure or planting more than three (3) feet in height shall be erected, placed, or maintained within the triangular area formed by the intersecting street lines and a straight

line joining said street lines at points which are thirty (30) feet distant from the point of intersection, measured along said street lines.

1324.2 Distracting Lights: No artificial lights or reflecting devices shall be located or displayed where such lights or devices interfere with or compete for attention with traffic signals or divert the attention of operations of motor vehicles or otherwise create traffic hazards, or create glare on any abutting property.

12.5 Sign Regulations:

No sign or other device for advertising purpose or any kind may be erected or established except as follows:

12.5.1 Residential, Agricultural, and Mobile Home Park Districts:

a) Permitted nonresidential uses and legal non-conforming, nonresidential uses, but not including home occupations, places of worship, libraries, museums, social clubs or societies or day nurseries, may display not more than one sign or bulletin board pertaining to the use of property, having a total face area of not more than twelve (12) square feet, and not projecting beyond the principal building of such use to which they are attached more than twelve (12) inches, except that where such nonresidential uses are set back from property lines, such sign may be erected on the ground, provided that such ground signs shall not exceed twelve (12) square feet in total face area, shall not exceed four (4) feet in height, and shall be nearer than ten (10) feet from nearest point of sign to any property line. If such free standing sign faces substantially at right angles to the road and/or displays in more than one direction, it shall have a face area of not more than eight (8) square feet per side, with no more than two (2) sides.

b) Dwellings for five (5) or more families may display one non-illuminated sign identifying the premises, having an aggregate total face area of no more than eight (8) square feet and not projected beyond the principal building on the lot more than twelve (12) inches.

c) Any dwelling unit in a detached, attached or town house structure may display one name plate or professional sign not exceeding two (2) square feet in area.

d) Any tourist home may display one sign not exceeding six (6) square feet in area; and not projecting more than twelve (12) inches from the principal building on the lot.

12.5.2 Commercial Districts: Not more than two signs per business unit, having a total face area of fifty (50) square feet; per sign. Such signs shall not project more than five (5) feet beyond the principal building on the lot, and there shall be not more than one projecting sign per business unit, provided further that such signs shall not extend more than fifteen (15) feet above the ground level or exceed the highest part of the building housing the business or service advertised, whichever is less restrictive except in the case of pole signs which shall be limited to a maximum height of twenty-five (25) feet above ground level.

12.5.3 Industrial District:

a) An owner or occupant may maintain a detached identification sign having an aggregate total face area of not more than eighty (80) square feet and not more than ten (10) in height, provided such sign shall be designed as part of a comprehensive site and landscape plan and such sign shall be placed not closer than ten (10) feet from any property line.

b) Directory signs and orientation maps not exceed one hundred (100) square feet may be installed at each district entrance, provided such signs are designed as part of the site and landscape plan for the district or portion thereof covered by such directory. Directory signs listing occupants of individual buildings may be installed on the front lawn appurtenant to such building not closer than five (5) feet from the property line, provided such sign shall be designed as part of the site and landscape plan for such building and shall not exceed four (4) feet in height. Directional signs indicating entrances, exits and parking facilities not exceeding four (4) square feet may be appropriately positioned.

12.5.4 Projecting Signs: Signs projecting into a public right-of-way shall have a clearance of not less than ten (10) feet above the sidewalk or surrounding ground and not ~~less~~ **more** than fifteen (15) feet above the sidewalk or surrounding ground and not less than fifteen (15) feet above any public driveway or thoroughfare. No sign may project into any public right-of-way without written approval from the **Code Enforcement Officer** ~~Zoning Board of Appeals~~.

12.5.5 Subdivision Signs: Any person offering lots of sale in a subdivision may erect non-illuminated, directional signs within the limits of the subdivision or adjoining property in the same ownership, having an aggregate total face area of not more than fifty (50) square feet. The permit for such signs shall be issued for a period of one (1) year, and may be renewed for successive periods of one (1) year each following a determination by the building and zoning administrator that the signs have been repainted or are in good condition in each case.

12.5.6 Exemptions: The following signs shall be exempt from these regulations:

- a) Real estate signs which advertise the sale, rental, or lease of the sale, rental, or lease of the premises upon which said signs are located, measuring not more than six (6) square feet in a Residential District, twelve (12) square feet in any Commercial District, twenty (20) square feet in any Industrial District.
- b) One professional or business name plate not exceeding two (2) square feet in area for any one professional or business establishment where such signs would not otherwise be a permitted use.
- c) One sign denoting the architect, engineer, and/or contractor when placed upon work under construction, and not exceeding twelve (12) square feet in area.
- d) Memorial signs or tablets, names of buildings and date of erection when cut into any masonry surface or when constructed of bronze, stainless steel, or similar material.

- e) Traffic or other municipal signs, legal notices and such temporary, emergency or non-advertising signs as may be authorized by the Town Board.
- f) Posting of notices to the public pertaining to but not limited to fishing, trespassing and the like, provided each such sign does not exceed one (1) square foot in area.
- g) Signs or bulletin boards customarily incident to places of worship, libraries, museums, social clubs or societies not exceeding twenty-four (24) square feet in area and located on the premises of such institutions.

12.5.7 Illuminated Signs: Illumination of signs shall not be of intermittent or varying intensity or produce direct glare beyond the limits of the side property line. Colored lights of such shape and hue that they may be confused with official traffic lights and signals shall be prohibited. All bare incandescent light sources and immediately adjacent reflecting surfaces shall be shielded from view.

12.5.8 Roof Signs: No signs shall be placed on the roof of any buildings.

12.5.9 Posters: Temporary, nonpermanent posters advertising or announcing political events, sporting events, shows and elections, shall not be displayed until four (4) weeks prior to the event and must be removed within four (4) days after the event. No such sign shall be attached to a street or utility pole.

12.5.10 Maintenance, Alterations and Violations: No sign shall be erected or altered except in conformity with the provisions of this Local Law. It shall be the duty of the owner and occupant of lands or buildings having signs thereon to maintain the same free of faulty wiring, loose fastenings and any other conditions which, in the opinion of the Code Enforcement Officer, would render such a sign unsafe and hazardous to members of the public. If the Code Enforcement Officer shall find that any sign has been erected, altered or maintained in violation of the provisions of this Local Law, he shall serve written notice specifying the violation upon the owner of the sign and the owner or occupant of the land or building upon which the sign is erected, directing such owner or occupant to forthwith remedy such violation or remove such sign within thirty (30) days from the date of service of such notice. Such notice may be served personally or by certified mail addressed to such owner or occupant at the address stated in the permit application for such sign, or in the absence of such application, the address of the premises upon which such sign is located. Upon failure of such owner or occupant to remedy such violation or remove such sign within the thirty (30)-day period, the Code Enforcement Officer shall thereupon revoke such sign permit. Thereafter such owner or occupant shall be in violation of this Local Law. In addition to all penalties and remedies provided in respect of such violation of this Local Law, the Code Enforcement Officer may cause such sign to be removed and assess the costs and expenses incurred in such removal against the premises on which such sign is located. For the purpose of the service of all notices hereunder, the occupant of land or premises, if he shall not be the owner thereof, shall be deemed the agent of such owner for the purpose of receiving such notices, and service of notice upon such occupant shall be deemed service upon the owner.

12.5.11 Where the Code Enforcement Officer finds any sign no longer advertises an existing business conducted upon the premises on which such sign is located, he shall serve upon the owner or occupant of said premises a notice in the manner prescribed in the processing subparagraph, directing such owner or occupant to remove such sign within the period prescribed in the proceeding subparagraph. Upon failure of compliance, all provisions of the proceeding subparagraph with respect to enforcement shall apply.

12.5.12 Signs as Principal Use: No sign may be established as a principal use on any lot in any district except as otherwise expressly permitted by this Local Law.

12.6 Junk Yards: Junkyards as defined herein, may be permitted in the R-1 and R-2 Districts subject to the issuance of a special use permit and to the provisions of New York General Municipal Law Section 136, provided, however, the findings, conditions, and recommendations made by the Board of Zoning Appeals under special use permit review shall be considered as an advisory report to the Town Board in complying with Section 136 of the General Municipal Law. The provisions of the State Junk Yard Law (General Municipal Law Section 136) are hereby adopted by reference and shall apply to all junk yards as defined by this Local Law.

12.7 Solar and Wind Access: All wind power facilities shall abide by the Town of Esperance Wind Energy Law adopted on Oct. 21, 2010. No restriction will be placed on the design of the structures to impede or restrict future or subsequent solar access.

All solar collector systems shall be designed, erected and installed in accordance with all applicable codes, regulations and industry standards as referenced in the State Building Code.

Solar collectors shall be permitted only to provide power for use by owners, lessees, tenants, residents, or other occupants of the premises on which they are erected, but nothing contained in this provision shall be construed to prohibit "collective solar" installations or the sale of excess power through a "net billing" or "net metering" arrangement in accordance with New York Public Service Law § 66-j or similar state or federal law or regulation.

To the extent practicable the accommodation of solar access to sunlight for such equipment and the protection of access to sunlight for such equipment shall be encouraged in the application of the various review and approval provisions of the Town of Esperance.

A. ROOFTOP AND BUILDING -MOUNTED SOLAR COLLECTORS - Rooftop and building-mounted solar collectors are permitted in all zoning districts in the Town of Esperance subject to the following conditions:

1. Building permits shall be required for installation of all rooftop and building-mounted solar collectors.
2. Height limitations of this law shall not be applicable to solar collectors that are rooftop mounted, provided that rooftop solar collectors are mounted to such

height as is reasonably necessary to accomplish the purpose for which they are intended to serve, and that such structures do not obstruct solar access to neighboring properties. This applies to solar collectors mounted on flat roofs so long as the units do not extend horizontally past the roofline.

3. Rooftop units must have a three feet setback on all four sides.
4. Roof structures must be properly engineered to support collectors.
5. Rooftop units must be installed according manufacturer's specifications.

B. BUILDING-INTEGRATED PHOTOVOLTAIC (BIPV) SYSTEMS - BIPV systems are permitted outright in all zoning districts. No building permit is required if the system is installed when the structure the BIPV is part of is constructed.

C. GROUND MOUNTED AND FREESTANDING SOLAR COLLECTORS - Ground-mounted and freestanding solar collectors mounted on a pole are permitted as accessory structures in all zoning districts of the Town of Esperance, subject to the following conditions:

1. Building permits are required for all ground-mounted and freestanding solar collectors.
2. The location of the solar collectors must meet all applicable setback requirements for accessory structures in the applicable zoning district.
3. The unit must be installed in a side or rear yard.
4. Units that exceed 10 feet in height from the ground require an area variance.
5. Units less than 10 feet in height follow the standard building permit process.
6. The Town encourages installations that would employ landscape screening and other methods of enhancing the appeal of the ground-mounted and freestanding solar collector such as the use of architectural features, earth berms, or other screening which will harmonize with the character of the property and surrounding area.
7. Small experimental solar panels for charging batteries (less than one kilowatt) would not require any permits.
8. Solar collectors shall be located in a manner that reasonably minimizes shading of property to the north while still providing adequate solar access for collectors.

D. SOLAR-THERMAL SYSTEMS - Solar-thermal systems are permitted in all zoning districts upon issuance of a building permit.

E. SOLAR COLLECTION SYSTEMS GENERAL SAFETY - Solar energy systems and equipment shall be issued building permits only if the Zoning/Code Enforcement Officer determines that the proposed solar energy system does not present any unreasonable safety risks, including, but not limited to, weight load, wind resistance, ingress or egress in the event of fire or other emergency.

1. All solar collector installations must be performed by a qualified solar installer if the installation is by other than the homeowner.
2. Prior to operation, electrical connections must be inspected by the Zoning/Code Enforcement Officer and by an electrical inspection person or agency as determined by the Zoning/Code Enforcement Officer in conformance with State Building Code.
3. Any connection to the public utility grid must be inspected by the appropriate public utility.
4. Solar energy systems shall be maintained in good working order and shall be removed if not in use for more than 12 months by removal of such system and mounting hardware within 90 days after the 12th month.
5. Rooftop and building-mounted solar collectors shall be designed to be and installed to be in conformance with the New York Uniform Fire Prevention and Building Code Standards that are applicable when the building permit is issued.
6. If solar storage batteries are included as part of the solar collector system, they must be placed in a secure container or enclosure meeting the requirements of the New York State Building Code when in use. When they are no longer in use, they shall be disposed of in accordance with the laws of New York and any other applicable laws or regulations.
7. Reflection from solar collection systems onto buildings shall be avoided.

12.8 Railroad Property: Any use necessary for the efficient and safe operation of a railroad which services multiple jurisdictions shall be permitted on property owned by such railroad and in accordance with the setback requirements of the zoning district in which the railroad property lies.

12.9 Kennels, Commercial, Private, Hobby

(1) Purpose: In order to promote the general welfare of the town, new kennels shall be allowed only by Special Use Permit in certain districts; (see Appendix A – Use and Area Schedule). The application shall include a diagram, to scale, which displays the kennel building(s) and all other inhabited dwellings in the vicinity, information on buffers, number and type of animals and any other information deemed appropriate.

(2) Conditions to be considered when hearing a request for a Kennel Special Use Permit:

- (a) The closeness to adjacent ~~properties~~ property lines, (minimum of five hundred (500) feet for Commercial Kennels; minimum of two hundred (200) feet for Private and Hobby Kennels).
- (b) The maximum number of animals to be maintained.
- (c) The effect on the character of the neighborhood.
- (d) Existing or proposed natural or man-made buffers.

(3) Pre-existing Kennels: Kennels in existence to the passage of this chapter shall be subject to and conform to the standards of any existing local law in force at the time the kennel was established. However, if an existing kennel becomes a nuisance, any of the above conditions can be imposed after a public hearing.

(4) Kennels, Commercial:

- (a) No site preparation or construction shall commence, nor shall existing structures be occupied, until final site plan approval has been granted by the Planning Board and permits have been issued by governmental agencies involved.
- (b) Shelters and facilities for kennel animals ~~within kennels~~ shall not be closer than two hundred (200) feet from ~~to~~ all lot lines other than the front lot line. This shall include all areas enclosed by fences for the use of animals. No shelters shall be located in the front yard.
- (c) No kennel shall be located closer than five hundred (500) feet to an existing residential dwelling on an adjacent lot.
- (d) There shall be no incineration of refuse upon the premises.
- (e) The site plan shall contain provisions for:
 - (i) Adequate measures to prevent offensive noise and odor.
 - (ii) Disposal of all animal waste.

(5) Local Ordinance #1: Existing “Dog Control Ordinance for the Town of Esperance – Local Ordinance #1 – 1988” applies to all kennels.

SECTION 13 SPECIAL USE PERMITS

13.1 Special Use Permit: On referral by the Code Enforcement Officer, after application has been made to him for a building permit, the Planning Board is hereby authorized to

issue a special use permit for any use for which this Law requires the obtaining of such permits from such Planning Board, subject to applicable regulations of this Law and procedures in Town Law Section 274-b of the State of New York. ~~After due public notice and hearing and subject to appropriate conditions and safeguard, the Board of Appeals may issue special permits for any of the uses for which this Local Law requires the obtaining of such permits from the said Board; or for the extension of a building or use as such existed at the time of passage of this Local Law or any amendments thereto a contiguous more restricted district for a distance not exceeding fifty (50) feet; but not for any other use or purpose.~~

No special use permit shall be granted until the **Planning** ~~Zoning~~ Board of Appeals shall find and determine that:

- a) Such use is reasonably necessary or convenient to the public health, welfare or the economic or social benefit of the community.
- b) Such use is suitably located in relation to **energy**, transportation, water and sewerage requirements of this Local Law or where not specifically required, that such facilities are otherwise adequate to accommodate anticipated use.
- c) No traffic congestion or hazard will be created.
- d) ~~The character of the neighborhood and values of surrounding property are reasonably safeguarded.~~ **The granting of the special use permit will not alter the general character of the surrounding area, or impair the intent or purpose of this Law, or of the Comprehensive Plan, or of land use and similar goals and plans from time to time adopted by the Town Board and in effect at the time in question.**
- e) Such use will comply with all other terms, conditions, requirements and standards imposed by this Local Law, ~~including the advisory recommendation of the Planning Board.~~
- f) **The operations in connection with the proposed project will not be objectionable in nature to nearby properties and properties generally in the district by reason of noise, fumes, vibration, flashing lights, increased traffic or any other objectionable reasons.**

The **Planning** ~~Zoning~~ Board of Appeals shall render its decision within sixty (60) days of the final hearing. ~~if the Planning Board review is not required and within sixty (60) days of the final hearing after such review is received if such review is required.~~

The **Planning** ~~Zoning~~ Board of Appeals is hereby authorized and empowered to **require** ~~any and shall in any special use permit such~~ additional specific terms and conditions as it shall deem reasonably necessary to insure or promote public health, safety and convenience.

13.1.1 Information Required: Each application for Special Use Permit shall be made in writing to the Code Enforcement Officer and shall be accompanied by the information required herein. The Planning Board ~~and the Zoning Board of Appeals~~ may require such additional information or documentation as may be necessary to fully and properly

consider the particular Special Use Permit application. At a minimum, ~~least~~ the following information is required:

A general and complete description of the proposed Special Use, together with a Site Plan of the sufficient detail and scale to accurately locate the information listed below:

- 1) Title of drawing, including name and address of applicant and person responsible for preparation of such drawing.
- 2) North arrow, scale and date.
- 3) Boundaries of the property plotted to scale.
- 4) Existing watercourses and bodies of water.
- 5) Location of any slopes of 5% or greater.
- 6) Proposed grading drainage.
- 7) Location, ~~architecture~~, proposed use and height of all buildings and site improvements including culverts, drains, retaining walls and fences.
- 8) Location, design and construction materials of all parking ~~and~~ truck loading areas, showing points of entry and exit from the site.
- 9) Location of outdoor storage, if any.
- 10) Description of the method of sewage disposal and location of the facilities.
- 11) Identification of water source; if well, located.
- 12) Location, size and design and construction materials of all proposed signs.
- 13) Location and proposed, development of all buffer areas, including existing vegetation cover.
- 14) Location and design of outdoor lighting facilities.
- 15) General landscaping plan.
- 16) Statement or map indicating the use of each abutting lot.

13.1.2 ~~Variances~~ Neighbor Notification: Applicant must notify, by certified mail with a returned receipt, all neighboring property owners within five hundred (500) feet of the property line, that a public hearing will be held by the ~~Planning Zoning Board of Appeals~~ for consideration of their application for a ~~special use permit variance~~. Receipts must accompany the application. The notification forms can be obtained from the Town.

13.1.3 Amendments to Special Use Permits: Following completion of the development or establishment of the use authorized by Special Use Permit, no such use shall be expanded or added to in any manner unless the Special Use Permit is amended following the procedures established herein for Special Use Permits.

13.1.4 One Time Application for Special Use Permits: Notwithstanding any other provision of the Zoning Law, a grant of a Special Use Permit shall be valid as to all subsequent similar activities or gatherings of more than five thousand (5000) people sponsored by the same applicant operated on a temporary or occasional basis within one (1) calendar year.

The Special Use Permit may be revoked upon a showing that the permit holder has ~~substantially~~ violated the terms and conditions of the Special Use Permit.

13.2 Special Use Permits for Telecommunication Facilities: Applicability of Standards and Procedures

- a) No telecommunication tower and/or accessory structures/use shall hereafter be used, erected, moved, reconstructed, changed or altered unless in conformity with these standards. No existing structure shall be modified to serve as a telecommunications tower unless in conformity with these standards.
- b) The standards shall apply to all affected property within the Town of Esperance.
- c) These regulations will be in addition to the requirements and procedures of **Section 13** ~~Paragraph 14.3.3 Special Use Permits and Paragraph 14.5 Planning Board Review of Special Permits~~ of the Town of Esperance Zoning Law.
- d) At all times, shared use of existing tall structures (for example: water towers, church steeples, farm silos, etc...) and existing or approved towers shall be strongly preferred to the construction of new towers.

13.2.1 Information and Procedures for Proposed Shared Use of Existing Tall Structures or Existing or Approved Towers

An applicant requesting a special permit where shared use of existing tall structures and existing or approved towers is proposed shall submit the following to the **Planning** ~~Zoning Board of Appeals~~:

- a) All information required in Paragraph **13.1.1** of the Town of Esperance Zoning Law.
- b) Documentation of intent from the owner of the existing facility to allow shared use.
- c) Report of a licensed professional engineer certifying that the proposed shared use will not diminish the structural integrity and safety of the existing tall structure, or existing or approved tower, and the report explains what modifications, if any, will be required in order to certify the above.
- d) Copy of the applicant's Federal Communications Commission (FCC) license.
- e) Information to verify compliance with Paragraph **13.2.4** (e-l) Design Standards for Telecommunication Towers and/or Accessory Structures/Uses
- f) Completed Full Environmental Assessment Form.
- g) Agricultural Data Statement (if applicable).
- h) The site plan in accordance with Paragraph **13.1.1** shall include grading plans for new facilities and roads, guy wire(s) and anchors, and any methods used to conceal modifications of the existing facility.
- i) The applicant shall submit to the **Planning** ~~Zoning Board of Appeals~~ a letter of intent committing the town owner, and his/her successors in interest, to notify the Code Enforcement Officer within thirty (30) days of the discontinuance of use of the tower. This letter shall be filed with the Town of Esperance prior to issuance of a building permit (assuming the special use permit is granted).

Obsolete or unused towers and accessory structures/uses shall be removed from any site within six (6) months of such notification. Failure to notify and/or remove the obsolete or unused tower and accessory structures/uses in accordance with these regulations shall be a violation and shall be punishable according to ~~Paragraph~~ **Section 18** ~~Violations and Penalties~~ of the Town of Esperance Zoning Law.

13.2.2 Information and Procedures for Proposed New Telecommunications Towers

An applicant requesting a special permit where a new Telecommunication Tower is proposed shall submit the following to the **Planning** ~~Zoning Board of Appeals~~:

- a) All information required in Paragraph **13.1.1** of the Town of Esperance Zoning Law.
- b) Documentation that shared use of existing tall structures and existing or approved towers is impractical.
 - 1) An applicant shall be required to present an adequate report inventorying all existing tall structures and existing or approved towers within a reasonable distance (both within and outside of the Town of Esperance) of the proposed site and outlining opportunities for shared use of these existing facilities as an alternative to a proposed new tower.
 - 2) The report shall demonstrate good faith efforts to secure shared use from the owner of each existing tall structure and existing or approved tower as well as documentation of the physical and/or financial reason why shared usage is not practical in each case.
 - 3) An applicant shall provide written requests and responses for shared use and information on alternative sites researched.
- c) Copy of the applicant's Federal Communications Commission (FCC) license.
- d) Completed Full Environmental Assessment Form.
- e) Agricultural Data Statement (if applicable).
- f) Information to verify compliance with Paragraph **13.2.4** (a-l) Design Standards for Telecommunication Towers and/or Accessory Structures/Uses
- g) The site plan in accordance with Paragraph **13.1.1** shall include grading plans for new facilities and roads, and the location of guy wire(s) and anchors.
- h) A "Zoning of Visibility Map" that indicates locations where the tower may be seen and the impact of the tower base, guy wires, accessory buildings and roads from abutting properties and roads.
- i) Pictorial representations of "before and after" views from key viewpoints both inside and outside of the town including, but not limited to: public roads, state and local parks, public lands, preserves and historic sites, arboretums open to the public, and any other locations the **Planning** ~~Zoning Board of Appeals~~ determines appropriate.
- j) Adequate emergency and service access plans shall be provided.
- k) Copies of notifications to the legislative bodies of the Towns of Carlisle, Cobleskill, Schoharie, Duanesburg, Charleston, Village of Esperance, and Schoharie County Planning and Development Agency. Such notification shall include the exact location of the proposed tower, and a general description of the project including, but not limited to, the height of the tower and its capacity for future shared use.

- l) Letter of intent committing the new tower owner, and his/her successors in interest, to negotiate in good faith for shared use of the proposed tower by other telecommunications providers or users in the future. Such letter shall commit the new tower owner and his/her successors in interest to:
 - 1) Respond in a timely, comprehensive manner to a request for information from a potential shared-use applicant.
 - 2) Negotiate in good faith concerning future requests for shared use of the new tower, by other telecommunications providers or users.
 - 3) Allow shared use of the new tower if another telecommunications provider or user agrees in writing to pay charges.
 - 4) Make no more than a reasonable charge for shared use, based on generally accepted accounting principles. The charge may include, but is not limited to, pro rata share of the cost of the site selection, planning, project administration, land costs, site design, construction and maintenance financing, return on equity, and depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference.
- m) The applicant shall submit to the Planning Zoning Board of Appeals a letter of intent committing the tower owner, and his/her successors in interest, to notify the Code Enforcement Officer within thirty (30) days of the discontinuance of use of the tower. This letter shall be filed with the Town of Esperance prior to issuance of a building permit (assuming the special use permit is granted). Obsolete or unused towers and accessory structures/uses shall be removed; the obsolete or unused tower and/or accessory structures/uses in accordance with these regulations, shall be a violation and shall be punishable according to ~~Paragraph~~ Section 18 ~~Violations and Penalties~~ of the Town of Esperance Zoning Law.
- n) The successful applicant shall provide the Town of Esperance a bond to cover the cost of removal of the tower and accessory structures should the owner not remove the unused telecommunications facilities within six (6) months of the notification of discontinuance. A qualified engineer of the Planning Zoning Board's of Appeals choice (in accordance with 13.2.4 (d) of this law) will determine the bond amount. The successful applicant will provide the Town of Esperance Planning Zoning Board of Appeals with proof of a bond within three months after final special use permit approval or before commencing construction, whichever comes first, or said special use permit shall be deemed void. The successful applicant will provide the Town of Esperance Planning Zoning Board of Appeals with proof of a renewed bond for each term no less than sixty (60) days before such bond expires.
- o) The successful applicant shall immediately obtain a policy of General Public Liability Insurance if a special use permit is granted. The policy shall be obtained from an insurance company licensed to do business in New York State. The policy shall be an amount equal to the coverage carried by the Town of Esperance. A certificate of insurance shall be presented to the Planning Zoning Board of Appeals within three months after final special use permit approval or before commencing construction, whichever comes first, or said special use permit shall be deemed void. The

certificate of insurance shall name the Town of Esperance as an additional insured. Said insurance coverage shall be maintained until such time as the telecommunication tower has been removed. The successful applicant will provide the Town of Esperance ~~Planning Zoning Board of Appeals~~ with proof of insurance and/or insurance renewal on a yearly basis, no less than sixty (60) days before such policy expires.

13.2.3 Information and Procedures for Proposed Accessory Structures/Uses at Existing or Approved Telecommunications Facilities

An applicant requesting a special permit where accessory structures/uses are proposed at existing or approved telecommunications facilities shall submit the following to the ~~Planning Zoning Board of Appeals~~:

- a) All information required in Paragraph 13.1.1 of the Town of Esperance Zoning Law.
- b) Copy of the applicant's Federal Communications Commission (FCC) license.
- c) Completed Short/Fall Environmental Assessment Form (Zoning Board discretion).
- d) Information to verify compliance with Paragraph 13.2.4 (e-l) *Design Standards for Telecommunication Towers and/or Accessory Structures/Uses*
- e) The site plan in accordance with Paragraph 13.1.1 shall include grading plans for new facilities and roads, and the location of guy wires(s) and anchors.
- f) The applicant shall submit to the ~~Planning Zoning Board of Appeals~~ a letter of intent committing the tower owner, and his/her successors in interest, to notify the Code Enforcement Officer within thirty (30) days of the discontinuance of use of the tower. This letter shall be filed with the Town of Esperance prior to issuance of a building permit (assuming the special use permit is granted). Obsolete or unused towers and accessory structures/uses shall be removed from any site within six (6) months of such notification. Failure to notify and/or remove the obsolete or unused tower and/or accessory structures/uses in accordance with these regulations shall be a violation and shall be punishable according to Paragraph Section 18 ~~Violations and Penalties~~ of the Town of Esperance Zoning Law.

13.2.4 Design Standards for Telecommunications Towers and Accessory Structures/Uses

- a) The ~~Planning Zoning Board of Appeals~~ may require that any new tower be designed to accommodate future shared use by other telecommunications providers and users. At a minimum, new towers shall be designed to provide for shared use by two (2) providers; or, designed so that they can be retrofitted to accommodate two (2) providers.
- b) Unless specifically required by other regulations, all towers shall have a neutral earth tone or similar painted finish or be camouflaged to minimize negative visual impact. If a painted finish is required, said painted finish shall thereafter be maintained and repainted as required by the Code Enforcement Officer.
- c) The maximum height of any new tower shall not exceed that which shall permit operation without artificial lighting of any kind or nature, in accordance with

- municipal, state, and/or federal law and/or regulation. This requirement may be modified at the discretion of the ~~Planning Zoning Board of Appeals~~ if the applicant can justify the need to exceed this height limitation. When lighting is required on the tower, and is permitted by the FAA or other federal or state authority, the minimum lighting required shall be allowed and lighting shall be oriented inward and should not project onto any surrounding residential property.
- d) The ~~Planning Zoning Board of Appeals~~ may request a review of the application by a qualified engineer of the ~~Planning Zoning Board's~~ of Appeal's choice. Such engineer would evaluate the need for, and the design of, any new tower and/or the cost of telecommunication facility removal for purposes of the applicant obtaining any required bond. The cost of such review will be borne by the applicant.
 - e) All telecommunications towers and/or accessory structures/uses shall be setback from abutting parcels, recorded rights of way, and roads a sufficient distance to contain on-site all ice-fall or debris from tower failure and preserve the privacy of any adjoining property. Towers shall be located with a minimum setback from any abutting parcels, recorded rights of way, and roads equal to one and one-half (1 1/2) times the height of the tower, or one hundred (100) feet, whichever is greater.
 - f) Accessory structures/uses and attachments to towers shall maximize the use of building materials, colors, and textures designed to blend with the natural surroundings. Any permitted lighting, shall be the minimum required, shall be oriented inward, and should not project onto any surrounding residential property.
 - g) No portion of any tower or accessory structure shall be used for a sign or other advertising purpose, including but not limited to: company name, phone numbers, banners, and streamers. Signs displaying owner contact information and safety instructions that are not of an advertising nature will be permitted at the discretion of the ~~Planning Zoning Board of Appeals~~ and shall not exceed five (5) square feet in surface area.
 - h) Existing on-site vegetation and ground contours shall be preserved to the maximum extent possible. No cutting of trees exceeding five (5) inches in diameter (measured at a height of four (4) feet off the ground) or deposition of fill materials shall take place on site prior to special use permit approval. If fill was deposited on the site five (5) years prior to an application for a special use permit, the height of a new telecommunication tower will be measured from the original ground elevation.
 - i) Deciduous or evergreen tree plantings may be required to screen portions of the tower and accessory structures/uses from adjoining property, public roads, and other important views or vistas.
 - j) Maximum use of existing roads, public or private, shall be made. Road construction shall, at all times, minimize ground disturbance and vegetation cutting to within the ~~towe~~ of fill, the top of cuts, or no more than ten (10) feet beyond the edge of any pavement. Road grades shall closely follow natural contours to assure minimum visual disturbance and reduce soil erosion potential.
 - k) Parking shall be provided to assure adequate emergency and service access. The ~~Planning Zoning Board of Appeals~~ shall determine the number of required spaces based upon the applicant's recommendation.
 - l) Sites of proposed new telecommunications facilities and sites where modifications of existing telecommunication facilities are proposed, shall be adequately enclosed by a

fence, design of which shall be approved by the **Planning Zoning Board of Appeals**, unless the applicant successfully demonstrates to the **Planning Zoning Board of Appeals** that such measures are unnecessary to ensure the security of the tower and the accessory structures/uses.

13.3 Planning Board Review of Special Permits

~~**14.5.1 Uses Reviewed:** The nature of the following uses and activities required special consideration of their site design and impacts upon the surrounding properties, environment, and community character. Prior to Special Use Permit consideration, the Planning Board shall review the application and make an advisory recommendation to the Zoning Board of Appeals. The following uses are subject to such advisory review:~~

- ~~1) Campgrounds and camps operated as such on an annual or seasonal basis, but not on a temporary or occasional basis;~~
- ~~2) Commercial summer camps and retreats operated as such on an annual or seasonal basis, but not on a temporary or occasional;~~
- ~~3) Public swimming, tennis and similar clubs operated as such on an annual or seasonal basis, but not on a temporary or occasional basis;~~
- ~~4) Transmission stations and towers, public utility installation;~~
- 5) Telecommunications Facilities;**
- ~~6) Airports and landing fields;~~
- ~~7) Commercial stables and riding academies operated as such on an annual or seasonal basis, but not on a temporary or occasional basis;~~
- ~~8) Commercial extraction of soil, sand, gravel, peat or stone;~~
- ~~9) Saw mills;~~
- ~~10) Bar or nightclubs;~~
- ~~11) Hotel and conference center;~~
- ~~12) Radio, television and other electrical transmission stations and towers;~~
- ~~13) Retail business or service, not specifically mentioned herein;~~
- ~~14) Theater concert hall;~~
- ~~15) Veterinarian office, animal hospital;~~
- ~~16) Wholesale business or service not specifically mentioned herein;~~
- ~~17) Shop for making of articles to be sold at retail on the premises;~~
- ~~18) Undertaking establishment;~~
- ~~19) Wholesale business, including storage in bulk or such material offered for sale by owner, lessee or occupant of premises as building material, contractor's equipment, dry goods, feed, food, furniture, hardware, ice, machinery, paint materials or shop supplies;~~
- ~~20) Commercial activities or gatherings of more than five thousand (5000) people operated on a temporary or occasional basis, provided that each commercial activity or gathering shall be deemed a different use requiring a separate Special Use Permit;~~
- ~~21) Public Assemblage gatherings of more than five thousand (5000) people, provided that each public assemblage shall be deemed a different public assemblage requiring a separate Special Use Permit;~~
- ~~22) Bottling works;~~

- ~~23) Building material yard;~~
- ~~24) Clothing manufacture;~~
- ~~25) Dyeing and dry-cleaning works;~~
- ~~26) Fruit canning or packing;~~
- ~~27) Ice plant;~~
- ~~28) Milk distribution plants;~~
- ~~29) Paper box manufacture;~~
- ~~30) Pencil manufacture;~~
- ~~31) Research and development facilities;~~
- ~~32) Junk Yards;~~
- ~~33) Auto Wrecking;~~
- ~~34) Shopping Centers;~~
- ~~35) Job Printing Plant;~~
- ~~36) Campgrounds;~~
- ~~37) Subdivisions;~~
- ~~38) Planned Development District.~~

~~**13.3.1 Procedure:** Each application for a Building Permit and Special Use Permit for the establishment, enlargement or expansion of any of the Special Uses listed in **Appendix A** 14.5.1 (above) shall be referred to the Planning Board, together with the maps and other information required for Special Use Permit review. Within forty-five (45) days of the receipt of the completed application, the Planning Board shall render an advisory recommendation to approve, approve with conditions, or to disapprove the application for Special Permit. Such advisory recommendation may include Conditions, modifications and safeguards deemed appropriate by the Planning Board in order to implement the purpose of this Local Law **shall be included**. Within ten (10) days, a written copy of the Planning Board recommendation **decision** shall be transmitted to the Code Enforcement Officer and Zoning Board of Appeals.~~

~~**14.5.3 Effect of Recommendation:** If the Planning Board disapproves, or recommends modifications or safeguards to the application, the Board of Zoning Appeals shall not act contrary to such advisory recommendation except by a vote of a majority plus one of all the members thereof and after the adoption of a resolution fully setting forth the reasons for such contrary action.~~

~~**13.3.2 Conference and **Public Hearing:**** A conference may be held between the Planning board and applicant to review the specifics of the use and site design, and to determine any additional information that may be appropriate in order to make an informed recommendation. The Planning Board may conduct a public hearing on the application after public notice.~~

~~**13.3.3 Consideration For Review:** The Planning Board's review of the Special Use Permit shall include, as appropriate, the following:~~

- ~~a) The findings and determinations required for Special Use Permits established in Section 13.3.3 (b, c, d, **and e**) of this Local Law.~~

~~b) The use would not have an undue adverse impact upon the natural, scenic, aesthetic, ecological, wildlife, historic recreational or open space resources of the Town of Esperance taking into account the commercial, industrial residential, recreational or other benefits that might be derived from the project.~~

~~c) The potential for adverse impact upon the following natural and cultural resources:~~

- ~~—Water Resources~~
- ~~—Land Forms~~
- ~~—Air Quality~~
- ~~—Noise~~
- ~~—Critical or sensitive natural features~~
- ~~—Wildlife~~
- ~~—Aesthetics~~
- ~~—Agricultural Soils and Activities~~
- ~~—Historic Sites~~

~~d) The ability of local government and school districts to provide facilities and services.~~

~~e) The adequacy of the proposed site plan with respect to:~~

- ~~—Parking~~
- ~~—Site Access~~
- ~~—Traffic Safety~~
- ~~—Screening of abutting properties~~
- ~~—Landscaping~~
- ~~—Location and scale of buildings~~
- ~~—Adequacy of on-site sewer and water facilities~~
- ~~—Drainage~~

SECTION 14 ADMINISTRATION

14.1 Interpretation, Conflict with Other Laws:

In their interpretation and application, the provisions of this Local Law shall be held to be minimum requirements, adopted for the promotion of the public health, safety, or the general welfare. Wherever the requirements of this Local Law are at variance with the requirements of any other lawfully adopted rules, regulation local laws, the most restrictive, or that imposing the higher standards shall govern.

14.2 Enforcement:

14.2.1 Code Enforcement Officer: This Local Law shall be enforced by a Code Enforcement Officer, who is appointed by the Town Board and whose duty is to:

- a) Issue land use/building permits and certificates of occupancy where compliance is made with the provisions of this Local Law, except on written

order of the **Planning Board or Zoning** Board of Appeals, **or** refuse to issue the same in the event of noncompliance, giving prompt written notice of such refusal and reason therefore to the applicant.

- b) Keep the **Planning Board and Zoning** Board of Appeals advised of all matters, other than routine duties, pertaining to the enforcement of this Local Law, and keep all records necessary and appropriate to this office and file them in the Office of the Town Clerk, including records of all permits and certificates of occupancy issued or withheld.
- c) Submit a report each month to the Town Board, enumerating the applications received, and stating the action taken.
- d) Investigate all complaints which have been filed with him in writing, and if he finds violation to exist, notify offending parties of such violation; in the absence of an exception granted to the violating parties by the **Zoning** Board of Appeals, the Inspector shall **begin** legal action against the offending parties.

14.2.2 Land Use/Building Permit: There shall be submitted with each application for a land use/building permit, duplicate written copies of all the information, building plans and plot plans necessary to enable the Code Enforcement Officer and Building Inspector to comply with the provisions of this and all other existing Town Laws and including New York State Fire Prevention and Building Code. One copy of such submitted information or plans shall be returned to the applicant when approved by the Code Enforcement Officer and Building Inspector, or by the **Planning Board and/or Zoning** Board of Appeals, when its approval is necessary, together with such permit, upon payment of a fee as set by the Town Board.

14.2.3 Certificate of Occupancy: It shall be unlawful to use or permit the use of any building or land, or part thereof, hereafter used, erected, changed, altered, or extended in whole or in part, and for which a building permit has been issued, until the Enforcement Officer and Building Inspector has inspected said building or use and certified that the Zoning Law and New York State Fire Prevention and Building Code, and any applicable variance or conditions thereto, have been complied with. If, in the best judgment of the Enforcement Officer and Building Inspector, the building or use meet all zoning requirements and conditions, and the plan which was submitted in accordance with applicable provisions of this law has been followed in all details, a Certificate of Occupancy shall be issued and the building or premises may be occupied and used.

14.2.4 Temporary Certificate of Occupancy: After review and under such rules and regulations as may be established by the **Zoning Board of Appeals** **Code Enforcement Officer** and filed with the Town Clerk, a temporary certificate of occupancy for no more than one (1) year may be issued ~~by the Code Enforcement Officer or Building Inspector.~~ The ~~Zoning Board of Appeals~~ **Code Enforcement Officer** shall have the right to revoke any temporary certificate at its own discretion. Such certificate shall be required for (a) unfinished structures, including cellars, (b) land for the purpose of temporary amusements, provided that such use shall not be detrimental to the community welfare. The **Zoning** Board of Appeals may, after public notice and hearing, authorize the Code

Enforcement Officer or Building Inspector to issue a single renewal of said temporary certificate of occupancy for a period of not more than one (1) additional year.

14.3 Zoning Board of Appeals:

A Zoning Board of Appeals is hereby created. Said Board shall consist of ~~seven (7)~~ five (5) members, who are residents of the Town of Esperance who are appointed by the Town Board. ~~The Town Board which shall also~~ designate the chairman. The five (5) members first appointed shall serve respectively for terms of one (1) year, two (2) years, three (3) years, four (4) years and five (5) years; thereafter, each member appointed shall serve for five (5) years. The two (2) additional members appointed thereafter shall be first appointed for terms of two (2) and four (4) years, respectively. The Zoning Board of Appeals shall prescribe the rules for the conduct of its affairs. Said Board shall have all the power and duties prescribed by law and by this Local Law.

14.3.1 Interpretation: Upon appeal from a decision by the Code Enforcement Officer, the Board of Appeals shall decide any questions involving the interpretation of any provision of this Local Law including determination of the exact location of any district boundary, if there is uncertainty with respect to interpretation of the Local Law.

14.3.2 Variances: In passing upon appeals, where there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of this Local Law, the Zoning Board of Appeals may vary or modify the application of any of the provisions of the Local Law relating to the use, construction or alteration of buildings or structure, or the use of land, so that the spirit of the Local Law shall be observed, public safety and welfare secured and substantial justice done. In granting any variance, said Board shall prescribe any conditions that it deems to be necessary or desirable.

Use Variances: No use variance shall be granted without a showing by the applicant that applicable regulations and restrictions have caused unnecessary hardship. To prove unnecessary hardship the applicant shall demonstrate that for each and every permitted use under this law:

- (1) The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
- (2) The alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the area or neighborhood;
- (3) The requested use variance, if granted, will not alter the essential character of the neighborhood; and
- (4) The alleged hardship has not been self-created.

Failure to meet any one of the four requires denial of the use variance by the Zoning Board of Appeals.

The Zoning Board of Appeals, in granting use variances, shall grant the minimum variance that it deems necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

The Zoning Board of Appeals, in granting use variances, shall impose such reasonable conditions and restrictions as are related to and incidental to the proposed use of the property. Such conditions shall be imposed for the purpose of minimizing any adverse impact the variance may have on the neighborhood or community.

~~Before a use variance is granted, the following findings must be made in the affirmative:~~

- ~~1) That the strict application of this Local Law would unnecessary hardship.~~
- ~~2) That the hardship created is unique and is not shared by all the property owners in the immediate vicinity of this property and in the same district.~~
- ~~3) That the granting of the variance does not circumvent the spirit of the Local Law and does not change the character of the District.~~
- 4) Applicant must notify, by registered mail with a returned receipt, all neighboring property owners within five-hundred (500) feet, that a public hearing will be held by the Zoning Board of Appeals for consideration of their application for a variance. Receipts must accompany the application. The notification forms can be obtained from the Town.

Area Variances: In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety, and welfare of the neighborhood or community. In making this determination the Board shall also consider:

- (1) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
- (2) Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
- (3) Whether the requested area variance is substantial;
- (4) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood; and
- (5) Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Zoning Board of Appeals, but shall not necessarily preclude the granting of the area variance.

The Zoning Board of Appeals, in granting area variances, shall grant the minimum variance that it deems necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

The Zoning Board of Appeals, in granting area variances, shall impose such reasonable conditions and restrictions as are related to and incidental to the proposed use of the property. Such conditions shall be imposed for the purpose of minimizing any adverse impact the variance may have on the neighborhood or community.

~~Before an area variance is granted, a finding must be made that the applicant has practical difficulties in complying with this Local Law.~~

SECTION 15

DEFINITIONS

15.0 Definitions: The following definitions shall apply to this Local Law:

Abandon: To voluntarily cease the use and maintenance of land, buildings or structures which have been non-conforming use, or to change from one nonconforming use to another or to a conforming use.

Accessory Structure: A structure customarily incidental and subordinate to the principal building on the same lot, where the principal building is lawful and where there is unity of ownership between the principal building and accessory structure. A structure that dominates the principal building in area is not eligible to qualify as an accessory structure.

Accessory Use: A use customarily incidental and subordinate to the principal use, where the principal use is lawful, where there is unity of ownership between the principal and accessory use, and where the principal and accessory uses are located on the same lot. A use that dominates the principal use in area, extent or purpose shall not be eligible to qualify as an accessory use. Under no circumstance shall any Explicitly Prohibited Use qualify as an accessory use.

~~An accessory structure or use is a structure or use which:~~

- ~~1. Is subordinate to and serves a principal building or a principal use;~~
- ~~2. Is subordinate in area, extent and purpose to the principal structure or principal use served;~~
- ~~3. Contributes to the comfort, convenience or necessity of the occupants, business or industry in the principal structure or principal use served; and~~
- ~~4. Is located on the same lot as the principal structure of principal use served, except as otherwise expressly authorized by the provisions of this Local Law.~~

Addition: Any structure which is built or placed as to be attached to a building and have a common roof or wall with the building it is attached to.

Agriculture: The land and on-farm buildings, equipment, manure processing and handling facilities, and practices which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise, including a “commercial horse boarding operation”, a “timber operation”, “compost,

mulch or other organic biomass crops”, and “commercial equine operation”. Such farm operation may consist of one or more parcels of owned or rented land, which parcels may be contiguous or noncontiguous to each other

The use of land and on-farm buildings and equipment employed for an agricultural purpose, including farming, dairying, pasturage, agriculture, horticulture, floriculture, viticulture, and animal and poultry husbandry, and the necessary accessory uses for packing, treating, or storing and produce; provided, however, that the operation of any such accessory uses shall be secondary to that of the normal agricultural activities.

Alteration Structural: Any change in the supporting members of a building such as bearing wall, columns, beams or girders.

Alternative Energy System: Structure, equipment devices or construction techniques for the production of heat, light, cooling, electricity or other forms of energy on site and may be attached to or separate from the principal structure.

Animal Hospital or Veterinary Hospital: A place where animals or pets are given medical or surgical treatment and are cared for during the time of such treatment. Use as a kennel shall be limited to short-time boarding and shall be only incidental to such hospital use.

Apartment: A portion of a building providing complete housekeeping facilities for one family.

Apartment House: Same definition as Dwelling - Multi Family (~~Subsection 3.5.38~~).

Area, Building: The total of areas taken on a horizontal plane at the main grade level of the principal building and all accessory buildings exclusive of uncovered porches, terraces and steps.

Area, Land: The term “land area”, when referring to the required area per dwelling unit, means “net land area”, the area exclusive of streets and other public open space.

Area, Total Floor: The sum of the gross horizontal area of the several floors of the principal building on a lot, excluding the area of porches and patios covered or uncovered and also excluding cellar and basement floor area not devoted to residential use. All dimensions shall be measured between exterior faces or walls.

Bar: An establishment in business for the sale and consumption of alcoholic beverages. Different degrees of food service may be available, but the primary function is for the consumption of alcoholic beverages. No live entertainment is permitted. The definition for “bar” shall also apply to, but not be limited to, uses referred to as a “bar room” and/or “tavern”.

Basement: A story partly under-ground.

Billboard: Any structure or portion thereof situated on private premises upon which are signs or advertisements containing written or pictorial information not directly related to the principal use of the land upon which it is located.

Boarding and/or Rooming House: A dwelling, other than a hotel, wherein more than three (3) persons are sheltered and/or fed for profit.

Building: Any structure constructed or used for residence, business, industry, or other public or private purposes or accessory thereto, including tents, lunch wagons, dining cars, trailers, billboards, signs and similar structures whether stationary or moveable.

Building, Accessory: A supplemental building, the use of which is customarily incidental to that of a main or principal building, and which is located on the same lot as that occupied by the main building.

Building, Alteration of: As applied to a building or structure, means a change or rearrangement in the structural parts or in the exit facilities, or in enlargement, whether by extending on a side or by increasing in height, or the moving from one location or position to another.

Building, Height of: The vertical distance measured from the average elevation of the finished lot grade at the front of the building to the highest point of the ceiling of the top story in the case of a flat roof; to the deck of a mansard roof; and to the mean height level between the lot on which the same is situated.

Building, Front Line: The base line of a vertical plane, parallel to the street line, and extended from one lot to another, beyond which no portion of a building shall extend into the front yard. Side and rear lines shall be determined in the same manner.

Building-Integrated Photovoltaic (BIPV) System: A solar energy system that consists of integrating photovoltaic modules into the building structure such as the roof or the facade and which does not alter relief of the roof.

Camp: Any area of land or water on which are located two or more cabins, tents, trailers, shelters, houseboats, or other accommodations of a design or character suitable for seasonal or other more or less temporary living purposes, regardless of whether such structures or other accommodations actually are occupied seasonally or otherwise.

Campground: A parcel of land improved with facilities designed and intended for the temporary accommodation of travel trailers, tents, recreational vehicles and campers.

Cellar: A story partly underground and having more than one-half of its clear height below the average level of the adjoining ground. A cellar shall not be considered in determining the permissible number of stories.

Center Line of Street or Road: A line midway between and parallel to two street or road property lines or as otherwise defined by the Planning Board.

Club: An organization catering exclusively to members and their guests or premises and buildings for recreational or athletic purposes which are not conducted primarily for gain provided there are no vending stands, merchandising or commercial activities, except as required generally for the membership and purposes of such club.

Clubhouse: A building to house a club or social organization not conducted for profit and which is not an adjunct to or operated by or in connection with a public tavern, café, or other public place.

Collective Solar: Solar installation owned collectively through subdivision homeowner association, college student groups, "adopt-a-solar-panel," or other similar arrangements.

Commercial Equine Operation: An agricultural enterprise, consisting of at least seven acres and stabling at least ten horses, regardless of ownership, that receives ten thousand dollars or more in gross receipts annually from fees generated through the provision of commercial equine activities including, but not limited to riding lessons, trail riding activities or training of horses or through the production for sale of crops, livestock, and livestock products, or through both the provision of such commercial equine activities and such production.

Commercial Horse Boarding Operation: An agricultural enterprise, consisting of at least seven acres and boarding at least ten horses, regardless of ownership, that receives ten thousand dollars or more in gross receipts annually from fees generated either through the boarding of horses or through the production for sale of crops, livestock, and livestock products, or through both such boarding and such production.

Commercial Vehicle: A vehicle having a registered carrying or hauling capacity of one ton or more. A vehicle especially constructed or equipped for the purpose of towing or removing wrecked or disabled vehicles and commonly called a "tow truck" or "wrecker" and all types of vehicular construction equipment used in the conduct of trade or business.

Compost, Mulch or Other Organic Biomass Crops: The on-farm processing, mixing, handling or marketing of organic matter that is grown or produced by such farm operation to rid such farm operation of its excess agricultural waste; and the on-farm processing, mixing or handling of off-farm generated organic matter that is transported to such farm operation and is necessary to facilitate the composting of such farm operation's agricultural waste.

Comprehensive Plan: a document adopted by the Town Board for the protection, enhancement, growth, and development of the Town, specifically pursuant to §272-a of the NYS Town Law.

Construction, Semi-Fireproof: That type of construction in which the walls, partitions, columns, floors and roof are non-combustible with sufficient fire resistance to withstand the effects of a fire and prevent its spread from story to story.

Convenience Grocery Store: A store or establishment providing retail sales of convenience food, grocery, and dairy items to the general public, and not exceeding three thousand (3,000) square feet in gross floor area. As an accessory use only, the incidental sale of general merchandise, and carry out food and beverage items is permitted.

Coverage: That percentage of the plot or lot area covered by the building area including accessory buildings.

Crops, Livestock and Livestock Products: Include but are not limited to the following:

- a. Field crops, including corn, wheat, oats, rye, barley, hay, potatoes and dry beans.
- b. Fruits, including apples, peaches, grapes, cherries and berries.
- c. Vegetables, including tomatoes, snap beans, cabbage, carrots, beets, and onions.
- d. Horticultural specialties, including nursery stock, ornamental shrubs, ornamental trees and flowers.
- e. Livestock and livestock products, including cattle, sheep, hogs, goats, horses, poultry, ratites, farmed deer, farmed buffalo, fur bearing animals, wool bearing animals, milk, eggs, and furs.
- f. Maple sap.
- g. Christmas trees derived from a managed Christmas tree operation whether dug for transplanting or cut from the stump.
- h. Aquaculture products, including fish, fish products, water plants, and shellfish.
- i. Woody biomass, which means short rotation woody crops raised for bioenergy, and shall not include farm woodland.
- j. Apiary products, including honey, beeswax, royal jelly, bee pollen, propolis, package bees, nucs (small honey bee colonies created from larger colonies) and queens.

Customary Agricultural uses: Ordinarily, the raising of crops, livestock or poultry, fruit or fur-bearing animals; where interpretation is required to determine whether a particular activity constitutes a customary agricultural use, ~~the Board of Appeals shall~~ **consideration shall be given** whether said type of activity (a) is traditional in the Town of Esperance and (b) is recognized as an agricultural pursuit by a government agency or by an agricultural bureau.

Day Care Center: A place or premises, certified or approved by New York State and providing daytime care or instruction for five (5) or more children away from their own homes for more than three (3) but less than twenty-four (24) hours per day, by an individual, association, corporation, institution or agency. The term day care includes nursery school.

Density: The number of dwelling units per acre of land area.

Development: Any man-made change to improve or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations located within any given area.

District: The portion(s) of the territory of the Town, within which certain regulations and requirements, or various combinations thereof, apply under the provisions of this chapter.

Drive-In Establishment: A place of business being operated for the sale and purchase of retail food and other goods, services, or entertainment, which is laid out and equipped so as to allow its patrons to be served or accommodated while remaining in their automobiles on the premises or elsewhere on the premises but outside of any completely enclosed structures.

Dwelling: A house, mobile home, apartment building or other building designed or used primarily for human habitation. The word “dwelling” shall not include tourist homes, motels, or other structures designed for transient residence.

Dwelling – Single Family: A dwelling unit designed for the use by a single family.

Dwelling – two-family: A detached building containing two dwelling units separated by a party wall or located one unit above the other.

Dwelling – Multi-Family: A dwelling which is either rented, leased, let or hired out, to be occupied, or is occupied as the temporary or permanent residence or home of three or more families living independently of each other, and containing three (3) or more dwelling units, including but not limited to the following: at tenement, flat house, maisonette apartments, apartment house, apartment hotel, tourist house, bachelor apartment, studio apartment house, duplex apartment house, kitchenette apartment house, hotel, lodging house, rooming house, boarding house, boarding and nursery school, furnished room house, club, sorority house, fraternity house, college and school dormitory, convalescent, old-age or nursing homes or residences and condominiums and sale dwelling units in one or more buildings. It shall also include a private dwelling, two or more stories in height and with five or more boarders, roomers, or lodgers in one or both households.

Dwelling – Row or Town House: A dwelling accommodating or designed to accommodate but a single family in a single dwelling unit, the walls on two sides of which may be in common with the walls of adjoining dwellings and are part of lot line walls.

Dwelling Unit: Any dwelling or portion thereof used or intended to be used by one family, and providing complete housekeeping facilities therefore.

Efficiency Apartment: A dwelling unit without a separate distinct room for sleeping.

Enactment: Whenever the word “enactment” is used herein, it refers to the date of the enactment of this Local Law.

Excavation: The removal of sand, gravel, soil (including topsoil) or other natural deposits by stripping, digging or other means.

Excavation, Small Scale: excavation of 750 cubic yards or less in a calendar year.

Family: A family shall mean one or more persons living and cooking together as a single housekeeping unit.

Farm: Any parcel of land containing at least five (5) acres which is used primarily for gain in the raising of agricultural products, livestock, poultry, or dairy products. It includes necessary farm structures within the prescribed limits and the storage of equipment used, storage of produce processing and sale of farm produce. It excludes the raising of fur-bearing animals, riding academies, livery or boarding stables and dog kennels.

Farm Worker: A tenant employee of an operating farm in a State certified agricultural district who is involved in the production function of the farm operation a minimum of a part-time seasonal basis.

Finished Grade: The elevation at which the finished surface of the surrounding lot intersects the walls or supports of a building or other structure. If the line of intersection is not reasonably horizontal, the finished grade, in computing height of building and other structures or for other purposes shall be the average elevation of all finished grade elevation around the periphery of the building, except that this average shall not exceed one-half of the floor to ceiling height.

Flush Mounted Solar Panel: Photovoltaic panels and tiles that are installed flush to the surface of a roof or wall and which cannot be angled or raised.

Freestanding or Ground-Mounted Solar Energy System: A solar energy system that is directly installed on the ground and is not attached or affixed to an existing structure.

Garage – Private: A garage not conducted as a business.

Garage – Public: A garage conducted as a business. The rental of storage space for more than two (2) passenger cars or boats or camp trailers or for one (1) commercial vehicle not owned by a person residing on the premises shall be deemed a business use.

Gasoline Station – Motor Vehicle Service Station: Any area of land including structures thereon that is used either for the sale of gasoline, or any other motor vehicle fuel, together with oil and other lubricating substances, including any sale of motor vehicle accessories, or that is used and is available to the public for storage, repair, rental,

greasing washing, servicing, adjusting or equipping of automobiles or other motor vehicles.

Gross Floor Area: The sum of the horizontal areas of the floors of a building excluding unenclosed or unheated porches, basement areas and garages, measured from the interior face or the exterior walls, except that basement space used for retailing shall be included for purposes of calculating requirements of accessory off-street parking space and accessory off-street loading berths. The minimum gross ground floor area for any dwelling unit shall not be less than eight hundred (800) square feet.

High Volume Hazardous Material Handling -- transport to/from or the storage of materials at any single non-agricultural or non-residential manufacturing or construction project site that meets either or both of the following criteria:

1. Generation of more than one (1) truck trip per day for more than three (3) days in a week (any consecutive seven (7) day period). Trucks must have a gross weight of twenty (20) tons or more to be counted and must be handling material which is considered to be containing, in whole or in part, hazardous waste as defined by the US Environmental Protection Agency or NYS Department of Environmental Protection.
2. Temporary or permanent storage in excess of a gross volume of three hundred (300) gallons or more per site containing, in whole or in part, hazardous material as defined by any Federal or New York State Agency (e.g US Environmental Protection Agency, NYS Department of Environmental Protection).

Home Occupation: An occupation or profession which:

1. Is carried on wholly within the enclosed walls of the dwelling unit exclusive of accessory structures and does not use more than twenty-five (25) percent of the floor area;
2. Is carried on by a member or members of the family dwelling unit;
3. Is clearly incidental and secondary to the use of the dwelling unit for residential purposes;
4. Not more than one (1) person outside the family shall be employed in the home occupation;
5. Shall not generate traffic beyond that normally expected in a residential neighborhood. Any need for parking generated by such use shall be provided in an off-street area, other than in a front yard;
6. Shall not create noise, dust, vibration, odor, fumes or electrical interference detectable by the normal senses or persons outside the dwelling unit. In the case of electrical interference, there shall be no radio, television or other electrical disruption outside dwelling unit or fluctuations in line voltages of the premises;
7. There shall be no advertising display visible from the street, other than a small unlighted professional nameplate not over two (2) square feet in area.

Hospital: An establishment for temporary occupation by the sick or injured for the purpose of medical diagnosis and treatment, including sanatoria, and shall be limited to the treatment or other care of humans.

Hotel: Hotel shall mean a public inn in which there are rental rooms without provisions for cooking in any individual room or suite.

House Trailer: Same definition as Mobile Home ~~Subsection 3.5.64.~~

Industrial: The industrial district shall be intended to permit the processing or fabrication of goods and products in a manner which does not produce odor, dust, smoke, noise, gas, fumes, cinders, vibration, glare or liquid or solid wastes which is offensive to neighborhood properties.

Junk Yard: Any place of storage or deposit outside of a building, whether in connection with another business or not, where two or more unregistered, old, or secondhand motor vehicles, no longer intended or in condition for legal use on the public highways, are held, whether for the purpose of resale of used parts therefrom, for the purpose of reclaiming for use some or all of the materials therein, whether metal, glass, fabric or otherwise, for the purpose of disposing of the same or for any other purpose; such term shall include any place of storage or deposit outside of a building for any such purposes or used parts of waste materials from motor vehicles which, taken together, equal in bulk two or more such vehicles provided, however, the term junk yard shall not be construed to mean an establishment having facilities for processing iron, steel or non-ferrous scrap and whose principal produce is scrap iron, steel or non-ferrous scrap and whose principal produce is scrap iron, steel or non-ferrous scrap for sale for re-melting purpose only. The term junk yard shall also be construed to mean any place of storage or deposit outside of a building, whether in connection with another business or not, where there is accumulated therein and thereon any second-hand or used property of whatever material it is composed or any waste material whether composed of wood, paper, cloth, cardboard, plastics, metals, stone, cement or otherwise which, taken together, exceeding in bulk three (3) cubic yards.

Kennel:

(a) **Kennel, Commercial Breeder:** any place where any number of dogs and/or cats over the age of six months are kept for the purpose of selling such animals and/or breeding same for sale, and where the keeping, breeding and/or selling of such animals is not merely incidental to the primary use of such premises for residential occupation.

Also, any place where nine or more dogs over the age of six months are kept, regardless of the intent in so doing and regardless of whether such use is incidental to the occupancy of said premises for residential purposes.

(b) **Kennel, Hobby:** Any place more than four but fewer than nine dogs over six months of age, all owned by the occupant of the property, are kept on the premises which are occupied primarily for residential purposes, and where the keeping, breeding and/or

selling of such animals is incidental to the occupancy of the premises for residential purposes.

(c) **Kennel, Private:** Any place where more than four dogs over the age of six months are kept and where the business of selling, boarding, breeding, grooming, training, and competing dogs who are not owned by the occupant of the property is conducted and where the keeping of such animals is incidental to the occupancy of the premises for residential purposes.

(d) **Kennel, Residential Individual:** Any place where no more than four dogs over six months of age are kept as personal pets by the occupant of such premises. The foregoing notwithstanding, where dogs have been kept as personal pets prior to the effective date of the adoption of this definition, such premises shall qualify as a “Residential Individual Kennel” without regard to the number of such “grand-fathered” dogs until said animals shall die or be transferred or otherwise disposed of.

~~The following chart shall be utilized to determine what is allowed and whether or not a Special Use Permit is required:~~

~~P Permitted Use~~
~~SP Special Use Permit Required~~
~~NA Not Allowed~~

	R1	R2	R3	C	I	MP
Kennel, Commercial Breeder	SP	SP	NA	SP	SP	NA
Kennel, Hobby	SP	SP	NA	SP	SP	NA
Kennel, Private	SP	SP	NA	SP	SP	NA
Kennel Residential Individual	P	P	P	P	P	P

Landfill: A lot or part thereof used primarily for the disposal by abandonment, dumping, burial, burning or any other means and for whatever purpose, of garbage, sewage, trash, refuse, junk, discarded machinery, vehicles or parts thereof, or waste material of any kind.

Lot: A place, parcel or plot of land occupied or to be occupied by a principal building and its accessory building or buildings, and including the yards and other open spaces required by this Local Law.

Lot – Corner: A lot abutting on two (2) or more streets at their intersection.

Lot Coverage: Same definition as Coverage ~~Subsection 3.5.28~~

Lot, Depth Of: A mean horizontal distance between the front and rear lot lines, measured in the general direction of its side lot lines.

Lot, Width Of: The mean width measured at right angles to its depth.

Lot Lines: Any line dividing one lot from another.

Mobile Home: Manufactured housing, having a dimension equal to or greater than 12 x 60 feet, built on a chassis. A mobile home shall be construed to remain a mobile home, subject to all town regulations applying thereto whether or not wheels, axles, hitch or other appurtenances of mobility are removed and regardless of the nature of the foundation provided. A mobile home shall not be construed to be a travel trailer or other form of recreational vehicle.

Mobile Home Park: A tract of land, not less than ten (10) acres of contiguous land, which is used or intended to be used for the location of two or more mobile homes to be used for residential dwellings.

Motel, Auto Court: A building or group of buildings, whether detached or connected used as individual sleeping or dwelling units designed primarily for transient automobile travelers and providing for off street parking facilities with provisions for but not limited to (a) automobile parking space to accommodate not less than one (1) car per rental unit. The term “motel or auto court” includes buildings designated as tourist cabins, motor lodges, motels and similar appellations.

Motor Vehicle: Any passenger vehicle, truck, truck-trailer, trailer or semi-trailer propelled or drawn by mechanical power.

Motor Vehicle Fuel Sales: Any area of land, including structures or improvements thereon, that is used to dispense motor vehicle fuels at retail to the public. Motor vehicle fuel sales establishments shall not be used for the storage, repair, rental, greasing, washing, servicing, adjusting or equipping of motor vehicles.

Net Metering: A billing arrangement that allows solar customers to get credit for excess electricity that they generate and deliver back to the grid so that they only pay for their net electricity usage.

Nightclub/Lounge: An establishment where the serving of alcoholic beverages is the primary amendment of this Local Law or its Amendment which, because of its inherent nature or construction, does not conform to and with the lot coverage, area, yard or parking provisions of this Local Law for the district in which it is located.

Nonconforming Use: The use of a building, structure or land existing at the time of enactment or amendment of this Local Law and which does not conform to the regulations of the district or zone in which it is situated.

Nonconforming Building, Structure: An established building structure, lawful prior to and at the time of the adoption of this Local Law or its Amendment which, because of its inherent nature or construction, does not conform to and with the lot coverage, area, yard or parking provisions of this Local Law for the district in which it is located.

Nursing Care Homes: Any place or institution for the aged, infirm, senile, chronic or convalescent established to render, for compensation, domiciliary care, custody, treatment, and/or lodging of two (2) or more persons who require or receive special diet, assistance in feeding, dressing, walking, administering medicines, carrying out the treatment of a doctor licensed by the State of New York in any other ordinary daily activities of life, or are confined to bed or a chair. This category does not include institutions for the treatment of the mentally ill, hospitals, sanitariums, boarding houses, and the like.

Nursing Home: Establishments providing full-time convalescent or chronic care, or both, for three or more individuals who are not related by blood or marriage to the operator and who, by reason of advanced age, chronic illness or infirmity, (including alcoholism, mental illness, drug-related illness) are unable to care for themselves. Definition includes Hospices, convalescent homes and homes for the aged. Does not include care for the acutely ill, or surgical or obstetrical services.

Nursery School: Uses the same definition as Day Care Center ~~in subsection 3-5.30.~~

Office Building: A structure for the principal use of which shall be the accommodation of office for administrative, governmental, public utility, professional or sales activity.

Outdoor Wood Burning Furnace – A device/structure that is designed to burn solid fuel so that heat is provided to the interior of a building and is typically detached from the structure that it heats.

Outside Storage of Materials: The unenclosed placement or deposition of natural or man-made objects or materials for future use.

Parking Space: The area required for parking one (1) automobile, which in this Local Law is held to be an area of 162 square feet (9 feet in width by 18 feet in length), together with the properly related access to a public street. This unoccupied area will be used exclusively for parking of automobiles or other private vehicles and no gas or automobile accessories will be sold and no other business will be conducted and no fees will be charged.

Photovoltaic (PV) System: A solar energy system that produces electricity by the use of semiconductor devices, called photovoltaic cells, which generate electricity when light strikes them.

Pollute: To contaminate the environment, make it unclean and/or impair natural processes and functions.

Porch - Open: A porch that is open on three (3) sides except for wire screening. A porch shall not be considered open if enclosed by either a permanent or detachable glass sash. A

structure having a driveway running to it, under it, or through it shall not be considered to be an open porch.

Public Assemblage: The gathering, collecting or congregation of 5,000 or more persons at any place within the Town within a 24 hour period, where any part of all of the activity of said persons is held out-of-doors or in non-permanent or temporary structure(s); or the gathering, collecting or congregation of ~~people more likely than not to attract~~ 5,000 or more people during a 24 hour period, where any part or all of the activity of said persons is anticipated to be held out-of-doors or in non-permanent or temporary structures.

Public Educational Institutions: A use of land for the primary purpose of providing educational services to children or adults, including but not limited to primary and secondary schools, nursery schools, colleges and universities, vocational schools, and facilities designed to provide instruction in any recognized skill or vocation.

Public Utility Structures: Public utility structures and facilities, such as electric lines and poles, gas mains, water mains, and telephone and telegraph lines, not including, however, high voltage transmission lines and poles, **Explicitly Prohibited Uses**, and telecommunication facilities.

Qualified Solar Installer: A person who has skills and knowledge related to the construction and operation of solar electrical equipment and installations and has received safety training on the hazards involved. Persons who are on the list of eligible photovoltaic installers maintained by the New York State Energy Research and Development Authority (NYSERDA), or who are certified as a solar installer by the North American Board of Certified Energy Practitioners (NABCEP), shall be deemed to be qualified solar installers for the purposes of this definition. Persons who are not on NYSERDA's or NABCEP's list of certified installers may still be deemed to be qualified solar installers if the Town of Esperance determines such persons to have had adequate training to determine the degree and extent of the hazard and the personal protective equipment and job planning necessary to perform the installation safely. Such training shall include the proper use of special precautionary techniques and personal protective equipment, consideration of reducing or eliminating nuisance reflection on buildings, as well as the skills and techniques necessary to distinguish exposed energized parts from other parts of electrical equipment and to determine the nominal voltage of the exposed parts.

Quarry, Sand Pit, Gravel Pit, Top Soil Stripping: A lot of land or part thereof used for the purpose of extracting stone, minerals, gravel, or top soil for sale, as a business operation, and exclusive of the process of grading a lot preparatory to the construction of a building permit has been made.

Religious Institution – A church, synagogue, mosque, temple or other place of religious worship including buildings to support the direct functions of the religious institution.

Restaurant, Sit-Down: A permanent building used for the serving of meals where customers are seated principally at a table and are waited on when seated, where a full line of meals is offered, where the main portions of the meals are not pre-cooked, pre-packaged or prepared in any manner such as this, in anticipation of customers, and further where, under proper authority, alcoholic beverages may be served from a service bar only and where the meal is not customarily or occasionally eaten in vehicles.

Restaurant, Fast-Food: A restaurant where patrons are not customarily served at tables or sit down counters and where all or a portion of the food is prepared, and wrapped, boxed, bagged or pre-packaged, or is prepared in a manner in anticipation of customers, and where the customer places an order at a common counter or drive-in facility by waiting in line or by being served through a sequential numbering system and either consumers the food at tables provided in or adjacent to the building, in vehicles on-site or elsewhere. Such uses as soft drink parlors, ice cream and/or hot dog stands and the like shall be considered to be in this general classification.

Riding Academy: Any establishment where horses are kept for riding, driving, or stabling for compensation.

Roadside Stands: A stall or booth for business which shall be limited to the seasonal sale of farm products.

Rooftop or Building-Mounted Solar System: A solar system in which solar panels are mounted on top of the structure of a roof either as a flush-mounted system or as modules fixed to frames which can be tilted toward the south at an optimal angle.

School, Private: Any kindergarten, primary or secondary school not operated by a public school district but furnishing a comprehensive curriculum of academic instruction similar to that of a public school.

Sign: Any device for visual communication that is used for the purpose of bringing the subject thereof to the attention of the public, but not including any flag, badge or insignia or any government or government agency, or of any civic, charitable, religious, patriotic, fraternal or similar organization.

Slaughterhouse: A building or part thereof or premises used or kept for the purpose of killing, dressing or packing any cattle, sheep, hogs, calves or other animals, or the meat thereof, intended for human consumption. Any facility requiring a slaughterhouse license from New York State pursuant to Article 5-A.

Solar Access: Space open to the sun and clear of overhangs or shade including the orientation of the streets and lots to the sun so as to permit the use of active and/or passive solar energy systems on individual properties.

Solar Collector: A solar photovoltaic cell, panel or array, or any solar hot air or solar energy collector which relies upon solar radiation as an energy source for the generation of electricity or transfer of stored energy to heat, air or water.

Solar Easement: An easement recorded pursuant to the NY Real Property Law § 335-b, the purpose of which is to secure the right to receive sunlight across real property of another for continued access to sunlight necessary to operate a solar collector.

Solar Energy Equipment/System: Solar collectors, controls, energy storage devices, heat pumps, heat exchangers, and other materials, hardware or equipment necessary to the process by which solar radiation is collected and converted into another form of energy and is stored, protected from unnecessary dissipation and distributed. Solar systems include solar thermal, photovoltaic and concentrated solar.

Solar Farm: an installation or area of land in which a large number of solar panels are set up in order to generate electricity commercially.

Solar Panel: A device for the direct conversion of solar energy into electricity.

Solar Storage Battery: A device that stores energy from the sun and makes it available in an electrical form.

Solar Thermal System: Solar thermal systems directly heat water or other liquid using sunlight. The heated liquid is used for such purposes as space heating and cooling, domestic hot water, and heating pool water.

Special Use: A use which because of its unique characteristics requires individual consideration through a procedure of review by the Planning Board, in order to determine whether a special use permit should be granted, conditionally granted, or denied.

Stable: An accessory building in which horses are kept for private use, public hire, remuneration or sale.

Store Floor Area: Same definition as Gross Floor Area ~~Subsection 3.5.9.~~

Story: Story shall mean that part of a building, included between any floor, other than a basement, and the floor or roof next above.

Street: Any public way dedicated to public travel greater than twenty (20) feet in width. The word “street” shall include the words “road”, “highway” and “thoroughfare”.

Street Line: A street line is the right-of-way line of a street as indicated by dedication or by deed of record.

Swimming Pool: A “swimming pool” shall be defined to mean any artificial pool or structure, intended for bathing or swimming purposes, made of concrete, masonry, metal or other impervious material, over 12 inches in depth.

Telecommunications Facilities: Any one or combination of antennas, buildings, structures, roads, fences, etc. assembled on a site and used in conjunction with telecommunication towers including, but not limited to, personal wireless service and/or commercial mobile service networks and/or Digital Television (DTV), High Definition Television (HDTV), and Advanced Television (ATV).

Theater, Outdoor: An open lot or part thereof, with its appurtenant facilities, devoted primarily to the showing of moving pictures of theatrical productions, on a paid admission basis, to patrons seated in automobiles or on outdoor seats.

Timber Operation: The on-farm production, management, harvesting, processing and marketing of timber grown on the farm operation into woodland products (e.g. lumber, firewood, posts) provided that such farm operation consists of at least seven acres and produces for sale crops, livestock or livestock products of an annual gross sales value of ten thousand dollars or more and that the annual gross sales value of such processed woodland products does not exceed the annual gross sales value of such crops, livestock or livestock products.

Tourist Home: A dwelling in which overnight accommodations are provided or offered for transient guests for compensation.

Terms: The present tense shall include the “future”; the singular number shall include the “plural”; and the plural the “singular”. The word “shall” is always mandatory. The term “person” includes a corporation as well as an individual. The term “lot” includes the word “plot” or “parcel”. The word “used” or “occupied” as applied to any land or building shall be construed to include the words “intended, arranged or designed to be used, or occupied”.

Tree, Large - Any tree with a trunk diameter of ten (10) inches or more measured one (1) foot from the ground.

Unfinished Structure: A structure shall be deemed unfinished if it does not have a permanent roof, completed enclosed outside walls, with the finished materials installed, all glazing in place, permanent heating, electric service and sewage installed.

Use: The specific purpose for which land or building is designed, arranged or intended, or for which it is or may be occupied or maintained. The term “permitted use” or its equivalent shall not be deemed to include any nonconforming use.

Used Car Lot: Any place outside a building where two or more used motor vehicles in operating condition are offered for sale or are displayed.

Variance, Area: The authorization by the Zoning Board of Appeals for the use of land in a manner that is not allowed by the dimensional requirements of the applicable zoning regulations.

Variance, Use: The authorization by the Zoning Board of Appeals for the use of land for a purpose which is otherwise not allowed or is prohibited by the applicable zoning regulations.

Yard – Front: An open space extending across the entire width of the lot between the building line or front main wall of a building and the front property line (street or road right-of-way line) and into which space there shall be no extension of building parts other than steps, open porches, eaves, cornices, and similar fixtures.

Yard – Rear: An open space extending across the entire width of the lot between the rear wall of the principal building and the rear line of the lot, and unoccupied except for accessory buildings and open porches which in the aggregate shall occupy not more than thirty-five (35) percent of the area.

Yard – Side: An open unobstructed space on the same lot with a principal building between the principal building and side line of the lot and extending through from the front yard to the rear yard, into which there shall be no extension of building parts other than eaves, with an overhang of not more than two (2) feet, rain water leaders, window sills, or other such fixtures and open steps for a distance not exceeding four (4) feet.

SECTION 16 AMENDMENTS

The Town Board may, from time to time, on its own motion or on petition or on recommendation of the **Planning Board or Zoning** Board of Appeals, after public notice and hearing, amend, supplement, change, modify or repeal this Local Law, pursuant to the provisions of the New York State Town Law applicable thereto. Every such proposed amendment shall be referred to the Planning Board for **a recommendation** ~~report~~.

SECTION 17 EXCEPTIONS

Nothing with this Local Law shall require any duly established municipal, educational, historical, fire-fighting, recognized fraternal or civic order or religious organization or institution located in the Town or political party qualified for a line on the ballot in a General Election to apply for or obtain a Special Use Permit with regard to gatherings of its members or the public assembly of its members, or public gatherings or assemblages designed for the furtherance of its purposes, including fund raising, except when they act as sponsor(s) for a public assemblage which is not their own operation or affair. Public gatherings or assemblages in conjunction with an existing permitted building or use by any duly established municipal, educational, historical, fire-fighting, recognized fraternal or civic order or religious organization or institution located in

the Town or political party qualified for a line on the ballot in a General Election shall not be prohibited in any district. Nothing within this ~~Section 14~~ Law shall negate the applicability of any requirements of a Public Assemblage law adopted by the Town of Esperance.

SECTION 18

SEVERABILITY AND PENALTIES

18.1 It is hereby declared to be the intent of the Town Board of Esperance that:

A. If any word, phrase, sentence, part, section, subsection, or other portion of this Law, or the application thereof to any person or to any circumstance, is adjudged or declared invalid or unenforceable by a court of competent jurisdiction, then such judgment or declaration shall be confined in its interpretation and operation only to the provisions of this Law which are expressly stated in the decision to be invalid, and all other provisions of the law shall continue to be separately and fully effective.

B. If a court of competent jurisdiction finds the application of any provision of this law to any building, other structure or tract or land to be invalid, in whole or in part, the effect of such decisions shall be limited to the person, property or situation involved in the controversy, and the application of any such provision to any other person, property or situation shall not be affected.

18.2 Validity: Should any section or provision of this Local Law be decided by the courts to be unconstitutional or invalid, such decisions shall not affect the validity of the Local Law as a whole or any part thereof other than the part so decided to be unconstitutional or invalid.

18.3 Violations and Penalties

18.3.1 Notice of Violation: Written notice of violation or stop work order signed by the Code Enforcement Officer shall be served upon the person or persons committing such violation either personally or by mail addresses to such person or persons at his or her last known address. One (1) week's continued violation after notice thereof shall have been given as herein provided shall constitute a separate violation.

18.3.2 Complaints of Violations: Whenever a violation of this Local Law occurs, any person may file a complaint in regard thereto. All such complaints must be in writing and shall be filed with the Code Enforcement Officer who shall properly record such complaint and immediately investigate and report the matter. All such complaints shall be signed by and bear the address of the complainant.

18.3.3 Penalties: A violation of this Local Law is a violation as classified by the New State Penal Law and an offense against this Local Law pursuant to New York State Town Law - punishable by a fine not exceeding three hundred fifty (\$350) dollars, or by imprisonment for not exceeding six (6) months, or by both such fine and imprisonment. Additional penalties shall include those prescribed by Section 268 of the Town Law.

Additionally, the Town authorities shall also have such other remedies as are provided by law to restrain, correct or abate any violation of this Local Law.

SECTION 19
WHEN EFFECTIVE

This local law shall take effect upon its adoption and filing with New York Secretary of State.